



COURT MARTIAL

Citation: *R. v. Garnett*, 2024 CM 4001

Date: 20240206

Docket: 202358

Standing Court Martial

Canadian Forces Base Trenton
Astra, Ontario, Canada

Between:

His Majesty the King

- and -

Sergeant S.P. Garnett, Offender

Before: Commander J.B.M. Pelletier, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Sergeant (Sgt) Garnett, having accepted and recorded your plea of guilty in respect of the only charge remaining on the charge sheet, the Court now finds you guilty of that charge for committing an act of a fraudulent nature, contrary to section 117(f) of the *National Defence Act (NDA)*.

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommend that I impose a reprimand and a fine in the amount of \$1,200.

[3] This recommendation severely limits my discretion in the determination of an appropriate sentence. As any other trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[4] The Supreme Court of Canada has set a high threshold to depart from joint submissions made by counsel because joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress and expense of a trial, and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[5] Yet, even if certainty of outcome is important for the parties, it is not the goal of the sentencing process. I must also keep in mind the disciplinary purpose of courts martial in performing the sentencing function attributed to me as a military judge. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following either a trial or a guilty plea. It is the only opportunity to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the presence of members of the offender's unit.

[6] The imposition of a sentence at court martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered, but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[7] The starting point for any sentencing decision is found at section 203.2 of the *NDA* which provides that a military judge shall impose a sentence commensurate with "the gravity of the offence and the degree of responsibility of the offender."

Matters considered

[8] In this case, the prosecutor read a Statement of Circumstances which explains how the offence was committed, referring to evidence which would prove the offence. It was formally admitted as accurate by Sgt Garnett and entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* article 112.51.

[9] For its part, the defence produced an Agreed Statement of Facts, which provides the background and personal circumstances of Sgt Garnett at the time of the offence and since, including his current employment.

[10] In addition to this evidence, counsel made submissions to support their position on sentence on the basis of the facts and considerations relevant to this case and of precedents in other cases, in order to assist the Court to adequately apply the purposes

and principles of sentencing to the circumstances of both the individual offender and the offence committed.

The circumstances of the offence

[11] The Statement of Circumstances and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence:

- (a) Sgt Garnett was posted to Canadian Forces Base (CFB) Trenton, Ontario on Imposed Restriction (IR) in September 2020. This was his second posting away from his family, which remained living near Comox, B.C. where he was posted from 2016 to 2018;
- (b) living on IR entitled Sgt Garnett to receive deposits from the base cashier at CFB Trenton for rental accommodations, in exchange for proof of payment of rent;
- (c) on 22 November 2021, Sgt Garnett emailed a forged rental receipt to a CFB Trenton headquarters (HQ) customer service clerk in the amount of \$900, indicating a payment for rent which he had not made;
- (d) on 13 December 2021, Sgt Garnett emailed a forged rental receipt to a CFB Trenton HQ customer service clerk in the amount of \$900, indicating a payment for rent which he had not made;
- (e) the property manager for the property owner identified the receipts sent by Sgt Garnett as forged because they were unsigned, not scanned and were in a different colour, used a different typeface, indicated payment to a different entity, recorded the date differently, and did not include the date of receipt;
- (f) an analysis of the Department of National Defence (DND) computer of Sgt Garnett revealed that he had emailed the rental company's logo and the forged receipt to himself; and
- (g) once the discrepancies in the appearances of the receipts was raised, Sgt Garnett sent an apology email from his DND computer to the customer service clerk who he had sent the forged receipts to. He also personally apologized to the property manager for involving her in this incident. At the first opportunity provided in the courts martial process, Sgt Garnett took responsibility for his conduct and agreed to plead guilty.

The circumstances of the offender

[12] Sgt Garnett is a forty-year-old Refrigeration and Mechanical Systems Technician. He joined the army in 2008 and following the completion of his training in

2010, has been employed on various technical duties, especially aircraft-arresting systems engineering support to operational air force units, from his posting to CFB Comox in July 2016 to his posting to CFB Trenton in 2020.

[13] Sgt Garnett was tasked extensively in support of operations during that time. For instance, he had to be taken off parental leave after the birth of his third child in 2017, due to an immediate military requirement. He was deployed to Canadian Forces Station Alert in the far north and was unable to take the balance of his parental leave following the deployment. The following summer, sixteen months into his posting to CFB Comox, Sgt Garnett was posted to CFB Cold Lake but due to extraordinary circumstances, his family was not authorized to accompany him to this semi-isolated post. He proceeded to CFB Cold Lake unaccompanied on IR and was then immediately deployed for three months to Inuvik, Northwest Territories.

[14] When the COVID pandemic restrictions were put in place, Sgt Garnett was not able to return home to visit his family in B.C. and was further restricted by the fact that he was a “one of one” for the maintenance of the aircraft arrestor gear at CFB Cold Lake which required daily inspections. These circumstances added to the strain on Sgt Garnett’s family and himself.

[15] After eighteen months at CFB Cold Lake, Sgt Garnett was posted to CFB Trenton. At this point, due to his family situation, he again proceeded on IR. As the arrestor gear crew chief, he was immediately sent on various tastings/exercises/air shows and deployments within Canada to support 1 Canadian Air Division missions.

[16] During this period of high operational tempo, Sgt Garnett did not fully realize the toll the stress was taking on him, as he was fully focused on the mission. He was living alone in a rented apartment in the Trenton area when he experienced financial difficulties and fell behind on his rent. He was still responsible for the majority of the expenses at the family home near Comox. He was also waiting for the CFB Trenton claims cell to finalize numerous claims that totalled approximately \$11,400. Of that sum, \$5,000 was on a government credit card and the balance was out of his own pocket.

[17] Sgt Garnett’s landlord informed him that he would be evicted if the balance of \$1,800 was not paid by the end of Nov 2021. Not having the available funds, nor any option to borrow from anyone, Sgt Garnett created the false receipts and forged the signature of his landlord. He submitted the receipts to authorities on base to receive the funds to pay his landlord. His primary motivation for his acts were “to get ahead of the power curve” so that he would not become homeless. The fraudulent acts were intended to obtain sums he would otherwise have been entitled to be reimbursed for, only before he would have been entitled to receive them.

[18] Sgt Garnett recognizes that this was wrong. He accepts full responsibility for what then seemed to him as his only option to escape his financial woes. He now

realizes that he should have had a conversation with his chain of command, even though he did not have faith that his superiors would be able to support him without retribution.

[19] Since the offence was committed, Sgt Garnett has finalized his divorce and entered into a consumer proposal to sort out his finances. He has suffered from mental health difficulties and has been on a regimen of medication and support to assist him. He is also on medical employment limitations for physical injuries related to working with aircraft arrestor gear.

[20] Sgt Garnett was removed from his primary duties in early 2023 and assigned light clerical duties. Since May of 2023 he has been employed by the aircraft restoration department of the National Air Force Museum of Canada (NAFMC) in Trenton pending a decision on his likely medical release. The executive director of the NAFMC reports that Sgt Garnett has integrated well into the restoration team, that he is motivated and a great worker.

The seriousness of the offence

[21] The Court has considered the objective gravity of the offence in this case. The offence in subsection 117 of the *NDA* attracts a maximum punishment of imprisonment for less than two years. It is therefore an objectively serious offence which recognizes the importance for CAF members to act with the outmost honesty in relation to their duties and the benefits associated to their military service. The offence allows military authorities to protect the integrity of its various benefits by pursuing charges under the Code of Service Discipline when these benefits appear to have been abused.

[22] I therefore agree with counsel to the effect that the circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender.

[23] In terms of the main purpose of sentencing in section 203.1 of the *NDA*, namely the maintenance of “discipline, efficiency and morale of the Canadian Forces,” the sentence proposed must be sufficient to denounce Sgt Garnett’s conduct in the military community and to act as a deterrent to him and others who may be tempted to engage in a similar type of fraudulent conduct, especially in relation to the entitlement to benefits made available to compensate for financial losses generated by the exigencies of military service.

[24] At the same time the sentence must not be so severe as to cause a disproportionate impact on the offender and risk compromising his necessary rehabilitation, especially for a member whose status and future is uncertain and may require retraining to obtain gainful civilian employment to support himself and his children.

Aggravating and mitigating factors

[25] The circumstances of the offence reveal aggravating factors in that Sgt Garnett's conduct was an act of dishonesty and deception which he reproduced twice. Such behaviour constitutes a breach of the trust that must accompany the relationship between a military member who is the recipient of special benefits such as entitlement to IR payments and the personnel supporting the process leading to payments being made. As an experienced member of the military, in the supervising rank of sergeant, the offender should have known better, as he acknowledged.

[26] That said, the Court acknowledges the following mitigating factors:

- (a) Sgt Garnett's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking responsibility for his actions in public, in the presence of members of the military community;
- (b) Sgt Garnett's quick realization that his actions were wrong and immediate apologies to those he involved in his fraudulent acts, before a formal investigation got underway;
- (c) the difficult circumstances in which Sgt Garnett found himself at the time of the offence, especially the threat of eviction he faced and his complicated financial situation. It would appear that the shortage of available funds he claims was in part due to the fact that significant sums owed to him in relation to his duties had not been paid. It is not for me to establish responsibility for that although I note that the administrative requirements which must be met before payments are authorized and made to CAF members are often numerous and time-consuming. There are resources available to obtain relief, however, and it seems in this case that Sgt Garnett did not have the confidence to ask for such assistance. These circumstances decrease the moral responsibility of Sgt Garnett to an extent but, as he admits, do not excuse his conduct.
- (d) the fact that Sgt Garnett has served the CAF satisfactorily for close to sixteen years in the regular force, often in challenging environments at significant personal cost, thereby making a significant contribution to the defence of this country; and
- (e) finally, the absence of conduct sheet or previous offences during this period which, combined with the exceptional circumstances in which he found himself in 2021, allow me to conclude that his fraudulent conduct of November and December 2021 was out of character for him.

[27] The Court also takes into consideration the scope of the fraudulent act, notably the fact that it involved a low level of sophistication and relatively small amounts. These factors are neither aggravating nor mitigating but they provide a frame of reference which educates the assessment of an appropriate sentence.

Assessing the joint sentence

[28] In the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, counsel brought court martial cases to my attention, involving fraudulent acts in relation to military duties or benefits. I do not see the need to comment in detail on those, except to state that they were useful illustrations to indicate to the Court that the joint submission of counsel is within a range of sentences previously imposed for similar behaviour.

[29] In any event, the issue for me to assess as a military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. As stated earlier, I may depart from the joint submission of counsel only if I consider that the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[30] In determining whether that is so, I must ask myself whether the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances that they would view it as a breakdown in the proper functioning of the military justice system. In this case, I do believe that a reasonable person aware of the circumstances would expect the offender to receive a punishment which expresses disapprobation for the failure in discipline and honesty involved and has a direct impact on the offender. The reprimand and the proposed fine constitute punishments aligned with these expectations. The proposed sentence meets the objectives of denunciation and deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[31] As recognized by the Supreme Court of Canada, trial judges must refrain from tinkering with joint submissions if their benefit can be maximized. Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence and, as stated during submissions, have taken the interests of the offender, victims, the chain of command and the broader public into consideration in arriving at their agreement on the proposed sentence. I trust that they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[32] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I cannot conclude that the sentence being jointly proposed would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. I must, therefore, accept it.

Terms of payment of the fine

[33] The *NDA* at paragraph 145 (2) provides that the terms of payment of a fine are in the discretion of the court martial that imposes it. Defence counsel submits that in the

specific circumstances of Sgt Garnett, a payment of \$100 per month would be sufficient to have the desired impact on the offender given that he is currently subjected to financial conditions in the course of a consumer proposal which requires him to make substantial monthly payments, in addition to support payments for his three children in B.C. I am informed that Sgt Garnett has about \$700 left per months to pay his personal expenses such as food and gas.

[34] The prosecution does not oppose this demand. I have in the past been reluctant to impose such low monthly payments, out of concern that the fine goes unnoticed and therefore fails to meet the objective of specific deterrence. In the circumstances I have before me in this case however, I do find that limiting the payment to \$100 per month would not have this effect as this sum is a significant portion of the offender's available monthly income.

[35] Sgt Garnett, you have demonstrated that you accept responsibility for your offence. I hope you have learned a lesson from this experience with the Court and the justice system. It is a lesson as relevant in civilian life as it is in the military. I believe you should reflect on what you have gone through and conclude that you do not wish to place yourself in a similar situation again.

FOR THESE REASONS, THE COURT:

[36] **SENTENCES** Sgt Garnett to a reprimand and a fine in the amount of \$1,200 payable in twelve instalments of \$100, commencing on 1 March 2024, and continuing for a further eleven months until the fine is paid in full. Should Sgt Garnett be released from the CAF before the fine has been fully paid, the unpaid portion of the fine becomes due on the day of his release.

Counsel:

The Director of Military Prosecutions as represented by Major R. Gallant

Lieutenant-Colonel A.H. Bolik, Defence Counsel Services, Counsel for Sergeant
S. P. Garnett