



COURT MARTIAL

Citation: *R. v. Duguay*, 2024 CM 6002

Date: 20241107

Docket: 202413

Standing Court Martial

4 Wing Cold Lake
Cold Lake, Alberta, Canada

Between:

His Majesty the King

- and -

Corporal R.M. Duguay, Offender

Before: Colonel N.K. Isenor, M.J.

A publication ban is still in force in a separate proceeding that applies to certain information disclosed during this proceeding. Information disclosed during this proceeding that could disclose information covered by the pre-existing publication ban has been redacted.

NOTE:	Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's " <i>Use of Personal Information in Judgments and Recommended Protocol</i> ".
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REASONS FOR SENTENCE

(Orally)

Introduction

[1] Corporal (Cpl) Duguay, having accepted and recorded your plea of guilty in respect of the only charge on the charge sheet, the Court now finds you guilty of that charge for having committed an act to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act (NDA)*.

[2] It is now my duty, as the military judge presiding over this Standing Court Martial, to impose the sentence. In the course of my deliberations, I have taken into consideration the principles of sentencing, applicable to criminal and penal courts in Canada, as well as to courts martial.

[3] I also took into consideration the relevant facts of this case, as they appear in the Statement of Circumstances read by the prosecutor, as well as the Agreed Statement of Facts and the documentary evidence submitted during sentencing, and the arguments of both counsel.

Joint submission made to the Court

[4] This is a case where a joint submission is made to the Court concerning the sentence to be imposed. Both prosecution and defence counsel jointly recommended that the Court impose a sentence of a severe reprimand and a fine in the amount of \$2,000.

[5] 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. This is the test promulgated by the Supreme Court of Canada (SCC) in *R. v. Anthony-Cook*, 2016 SCC 43.

[6] The threshold to depart from the joint submission being made is high as 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 channeled 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.

Goals and objectives of sentencing

[7] Although certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. The goals and objectives of sentencing generally relate to the protection of society, of which of course the Canadian Armed Forces (CAF) is a part, by fostering and maintaining a just, peaceful, safe, and law-abiding community.

[8] Importantly, in the context of the CAF, these objectives include the maintenance of discipline, that habit of obedience which is critical to the effectiveness of an armed force.

[9] The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender.

[10] Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender and the denunciation of unlawful behaviour.

[11] One or more of these objectives will inevitably predominate in the crafting of a fit sentence in an individual case, yet it must be kept in mind that each of these goals calls for the attention of the sentencing court, and a fit sentence should reflect an appropriate blending of these goals, tailored to the particular circumstances of the case.

[12] I must also keep in mind the disciplinary purpose of the Code of Service Discipline (CSD) and military tribunals in performing the sentencing function attributed to me as a military judge.

[13] As recognized by the SCC, courts martial allow the military to enforce internal discipline effectively and efficiently.

[14] Punishment is the ultimate outcome once a breach of the CSD has been recognized following either a trial or a guilty plea.

[15] It is the only opportunity for the Court 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.

[16] 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.

[17] 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 submissions 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.

[18] As the Court informed Cpl Duguay when he entered his plea of guilty, section 139 of the *NDA* prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment.

[19] Only one sentence is imposed upon an offender whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment.

[20] It is an important principle that the Court should impose the least severe punishment that will maintain discipline.

Fundamental principles of sentencing

[21] The fundamental principle of sentencing found at section 203.2 of the *NDA* provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

[22] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by Cpl Duguay and includes details as to his personal circumstances. It was entered as an exhibit, along with other documents provided by the prosecution as required by article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces*.

[23] A military impact statement was also entered as an exhibit and read by the deputy commanding officer of Cpl Duguay's unit.

[24] For its part, the defence produced an Agreed Statement of Facts describing the personal situation of Cpl Duguay before and since the offence.

[25] 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 four 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.

[26] As such, the Statement of Circumstances, the Agreed Statement of Facts, the submissions of counsel and the information on the documents entered as exhibits reveal the following circumstances relating to the offence and the offender:

Circumstances of the offence

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

“Background

1. Cpl Duguay joined the CAF as a Reserve member on 27 May 2015 in Victoria British Columbia. He was employed under numerous Class B contracts, mostly during the summer months, from June of 2015 until September of 2017. He was then employed on Class B reserve service year-round throughout most of 2018 and 2019. He transferred to the Regular Force in December of 2019, and was posted to Cold Lake, Alberta.

2. At the time of the offence, Cpl Duguay was a Regular Force member of the CAF, assigned to 4 Mission Support Squadron in Cold Lake, Alberta.

Incident

3. On 11 November 2022, Cpl Duguay was seen wearing three medals that he was not entitled to wear at the Cold Lake First Nations Remembrance Day Ceremony. Cpl Duguay has not been awarded any medals. He was seen wearing the South-West Asia Service Medal, the General Campaign Star—South-West Asia, and the Special Service Medal.

4. The incident was reported to Military Police. The consequent investigation, including a cautioned interview of Cpl Duguay, confirmed that he had been wearing the medals without authority to do so at the Remembrance Day ceremony.”

[28] The unit submitted a military impact statement that was submitted as an exhibit. It outlines that Cpl Duguay’s actions had a negative effect on discipline, efficiency and morale of the unit. Specifically, it speaks to his actions having not only dishonoured himself, but the sacrifices made by both veterans and serving CAF members.

Circumstances of the offender

[29] The documents examined by the Court and the submissions of counsel reveal the following circumstances relevant to Cpl Duguay.

“1. Cpl Duguay was born in Arlington, VA, USA. He grew up in a military family. His father was a MARE (Maritime Engineering) Officer who retired in 2006.

2. In 2000, Cpl Duguay moved to Victoria, BC, because of his father’s posting. He later joined the Army Cadets at the suggestion of school counsellors.

3. XXXX.

4. XXXX.

5. XXXX, Cpl Duguay would be diagnosed with PTSD for the first time in October 2015. The diagnosis would be restated in November 2022.

6. XXXX, Cpl Duguay proudly enrolled into the Army Reserves as an MSE Operator in May 2015.

7. While a reservist, Cpl Duguay had multiple periods of Class B service in various locations in Canada. Some of these periods of service comprised domestic deployments, including several Op LENTUS deployments in the period spanning 2017-2019.

8. He was promoted to Corporal in February 2018.
9. He transferred to the Regular Force in December 2019, remaining in his rank and trade, and was posted to 4 Wing at CFB Cold Lake.
10. The period of the COVID-19 pandemic, which started shortly after his transfer to the Regular Force, had a marked negative impact on Cpl Duguay's health, and subsequently his career.
11. Between May 2020 and March 2022, Cpl Duguay was involved in a toxic relationship which included abuse. He was the victim of several assaults during this period.
12. While on TD in Wainwright in 2021 during the pandemic, Cpl Duguay intervened to stop a serious sexual assault. One of the other individuals who intervened alongside him would commit suicide approximately two days later.
13. These events compounded the trauma XXXX.
14. As a result of these incidents, amongst others, Cpl Duguay was referred to CF Health Services in early 2022."

Seriousness of the offence

[30] The Court has considered the objective gravity of the offence in this case. The offence of conduct to the prejudice of good order and discipline contrary to section 129 of the *NDA*, attracts a maximum punishment of dismissal with disgrace from His Majesty's service. It is therefore an objectively serious offence going to the core of the need to maintain a disciplined armed force.

[31] The wearing of medals or decorations unearned trivializes the achievements and sacrifices of others within the profession of arms. As stated in *R. v. ex-Private C. Bordeleau*, 2005cm2019 at paragraph 10:

[Y]our acts demonstrate a lack of integrity in regard to the military institution, but also a lack of respect toward the principles governing the award of decorations and insignia and the trivialization of those principles. It should be specified that Her Majesty the Queen of Canada approved the creation of the Special Service Medal to reward the members of the Canadian Forces who have served in exceptional circumstances, in a particular place and for a particular period.[. . .]The importance of the respect that ought to be given to military insignia and decorations is crucial in the context of an armed force. Military insignia and decorations help to promote some of the qualities essential to military life, such as excellence, the feeling of belonging, devotion and courage. They often represent the achievement of a goal or a mission and they are indicative of recognition by the military or the Sovereign of a soldier or group of soldiers. To misappropriate insignia or decorations is to violate without colour of right the quasi-sacred nature of what they represent.

[32] Equally, as stated in *R. v. Fancy*, 2016 CM 1010 at paragraph 8, the offender's actions show, "a lack of[. . .]respect for the profound meaning of medals and decorations for the Canadian Armed Forces and for those who have gained the right to wear them."

[33] And lastly, as pointed out by Pelletier M.J. in *R. v. Osborne*, 2021 CM 4005 at paragraph 16:

Improperly wearing medals to which one is not entitled is actually cited in Note G to QR&O article 103.60 as a paradigm example of an action prejudicial to good order and discipline. It is so because, as stated in *R. v. Miller*, 2014 CM 2018 at paragraph 14, "medals and decorations only retain their meaning if there is rigour in the qualification criteria used to award them, and rigour in ensuring that they are worn only by those who have truly earned them and are entitled to wear them in accordance with the specified authority."

[34] I am of the opinion that Cpl Duguay demonstrated a serious lack of integrity and judgement when he decided to wear medals that he did not have authority to wear on 11 November 2022.

Sentencing objectives to be emphasized in this case

[35] Regarding the objective of sentencing to be emphasized in this case; in the Court's view, the circumstances of this case require that the focus be placed on the objectives of denunciation and general deterrence in sentencing the offender.

[36] In terms of the main purpose of sentencing in section 203.1 of the *NDA*, namely to maintain the discipline, efficiency and morale of the Canadian Armed Forces, the sentence proposed must be sufficient not only to deter Cpl Duguay from reoffending but must also denounce Cpl Duguay's conduct in the military community, and to act as a deterrent to others who may be tempted to wear medals for which they have no authority to wear. I must also keep sight of the objective of rehabilitation. The sentence proposed must not compromise the efforts that have been made and will still need to be made by Cpl Duguay to rehabilitate himself following these proceedings.

Aggravating and mitigating factors

[37] The Court considers as aggravating, in the circumstances of this case, the fact that the offence was committed by Cpl Duguay on Remembrance Day at a Remembrance Day service.

[38] The fact that Cpl Duguay has a conduct sheet that contains three entries with respect to *Criminal Code* offences.

[39] Also aggravating is the fact that Cpl Duguay's unit has written a military impact statement that outlines the negative effect his actions took on the discipline, efficiency

and morale of the unit, most particularly the negative effect of the fact that the offence took place on Remembrance Day.

[40] The Court acknowledges the following mitigating factors.

[41] Cpl Duguay'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 this public trial in the presence of many members of his unit and the military community.

[42] The fact that Cpl Duguay has had significant personal challenges, including Post Traumatic Stress Disorder XXXX. It is clear that he has had many challenges along the way. It is hoped that he will be able to continue to rebuild himself, albeit his future now lies outside of the CAF. And although these challenges provide a context for his conduct, they do not excuse it.

Assessment of the joint submission

[43] In terms of assessing the joint submission, in the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, counsel brought four court martial cases to my attention, many of which were joint submissions.

[44] The cases referred to by counsel included: *R. v. Bordeleau*, 2005cm2019, the only case that was not a joint submission, where the sentence was a reprimand and a fine in the amount of \$300 fine; *R. v. Miller*, 2014 CM 2018 a senior officer, was a joint submission receiving a severe reprimand and a fine in the amount of \$5,000 fine; *R. v. Fancy*, 2016 CM 1010, a master warrant officer and the squadron sergeant major, was a joint submission receiving a reduction in rank and a fine in the amount of \$300; and lastly *R. v. Osborne*, 2021 CM 4005, a finance officer, again a joint submission where the offender received a sentence of a reprimand and a fine in the amount of \$3,500.

[45] Although this is a relatively small sample, these cases show that the proposed sentence in this case, of a severe reprimand and a fine in the amount of \$2,000, is within the range of sentences imposed for similar conduct in the past.

[46] Ultimately, the issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better.

[47] 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.

[48] 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.

[49] 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 involved and have a direct impact on the offender.

[50] The proposed severe reprimand and fine is aligned with these expectations. They meet the objectives of denunciation and general deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[51] As recognized by the SCC, trial judges must refrain from tinkering with joint submissions if their benefits can be maximized.

[52] 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, as they are with the strengths and weaknesses of their respective positions.

[53] The prosecutor who proposes the sentence is in contact with the chain of command and victims. They are aware of the needs of the military and civilian communities and is charged with representing the community's interest in seeing that justice be done.

[54] Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed.

[55] Both counsel are bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest, as they have demonstrated in this case.

[56] Considering all the circumstances of the case, 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 and I therefore accept the joint submission.

[57] The circumstances of the offence that you admitted to having committed reveal behaviour that is unacceptable.

[58] Canadian Armed Forces medals and decorations hold special meaning. Both the meaning in the requirements to receive the honour, and, more importantly, what is given to Canada by each member individually to receive that honour. Members miss births, deaths, first steps, first words and many other important milestone events in their lives, sacrificing those moments, risking their lives and sometimes even giving their lives to support the Government of Canada's goals and CAF operations. Your actions, wearing

medals that you were not entitled to, not only shows your lack of respect for those sacrifices and those members, it diminishes the sacrifices of the members who earned that right, and that is unacceptable.

[59] You have, however, demonstrated that you accept responsibility for your offence and your counsel has asked me to consider your conduct as a significant lack of judgement on your part on the heels of significant medical and personal challenges. I am prepared to do that. I will invite you, however, to reflect on your actions and consider the fact that these actions must have raised significant questions about your integrity and judgement and I sincerely hope that you realize the importance of regaining that trust and that you are determined to make a future for yourself, ensuring that you do not find yourself before a court again.

FOR THESE REASONS, THE COURT:

[60] **FINDS** Cpl Duguay guilty of the charge of having committed an act to the prejudice of good order and discipline, contrary to section 129 of the *NDA*.

[61] **SENTENCES** Cpl Duguay to a severe reprimand and a fine in the amount of \$2,000. The fine is payable as follows: \$500 increments payable in four monthly instalments, the first instalment payable on or before 1 December 2024.

Counsel:

The Director of Military Prosecutions as represented by Major E. Cottrill

Lieutenant-Commander F. Belanger, Defence Counsel Services, Counsel for Corporal R.W. Duguay