



## COURT MARTIAL

**Citation:** *R v Cartwright*, 2014 CM 2015

**Date:** 20140905

**Docket:** 201390

Standing Court Martial

HMCS PREVOST  
London, Ontario, Canada

**Between:**

**Corporal B.D. Cartwright, Offender**

- and -

**Her Majesty the Queen**

**Before:** Colonel M.R. Gibson, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal Cartwright, having accepted and recorded your plea of guilty to the fourth charge on the charge sheet, the court now finds you guilty on that charge. It is now my duty to determine an appropriate, fair, and just sentence.

[2] In doing so, the court has considered the principles of sentencing that apply in the military justice system, the facts of the case as disclosed in the evidence heard by the court and the documents introduced in evidence, as well as the submissions of counsel for the prosecution and defence.

[3] The fundamental purposes of sentencing by service tribunals in the military justice system, of which courts martial are one type, are to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline,

efficiency and morale; and to contribute to respect for the law and the maintenance of a just, peaceful and safe society.

[4] The fundamental purposes are achieved by the imposition of just sanctions that have one or more of the following objectives: to promote a habit of obedience to lawful commands and orders; to maintain public trust in the Canadian Forces as a disciplined Armed Force; to denounce unlawful conduct; to deter offenders and other persons from committing offences; to assist in rehabilitating offenders; to assist in reintegrating offenders into military service; to separate offenders, if necessary, from other officers or non-commissioned members or from society generally; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community.

[5] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[6] Other sentencing principles include: a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances; a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances; a sentence should be the least severe sentence required to maintain discipline, efficiency and morale; and any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[7] In the case before the court today, I must determine if the sentencing purposes and objectives would best be served by deterrence, denunciation, rehabilitation or a combination of these factors.

[8] The court must impose a sentence that is of the minimum severity necessary to maintain discipline, efficiency and morale. Discipline is that quality that every Canadian Forces member must have that allows him or her to put the interests of Canada and of the Canadian Forces before personal interests. This is necessary because members of the Canadian Forces must promptly and willingly obey lawful orders that may potentially have very significant personal consequences, up to injury or even death. Discipline is described as a quality because ultimately, although it is something which is developed and encouraged for the Canadian Forces through instruction, training and practice, it is something that must be internalized as it is one of the fundamental prerequisites to operational effectiveness in any armed force.

[9] One of the most important components of discipline in the military context is self-discipline. The actions of Corporal Cartwright demonstrate that this is an area in which he has been deficient.

[10] The facts of this case are disclosed in the Statement of Circumstances entered into evidence. At all material times Corporal Cartwright was a member of the Regular

Force holding the rank of corporal and a member of the military police. On 4 December 2012, Corporal Cartwright was arrested and charged by members of the London Police Service in respect of other matters. In the course of a consensual search of his property the low velocity practice colour marking cartridges, which are the subject of the charge that he has pleaded guilty, were found to be unlawfully in his possession. These cartridges were the property of the Crown and are manufactured and provided solely to the Canadian Forces for operational use.

[11] The court considers that the aggravating factors in this case are the following:

- (a) the objective gravity of the offence of which Corporal Cartwright has been convicted. The offence of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act* is punishable by dismissal with disgrace from Her Majesty's service or to less punishment; and
- (b) the fact that Corporal Cartwright is a member of the military police of whom much is necessarily expected and that his actions slightly constituted a breach of the Military Police Professional Code of Conduct.

[12] The mitigating factors in this case include the following:

- (a) first and foremost, that Corporal Cartwright has pleaded guilty to the offence. This is always an important mitigating factor, reflecting that the offender has accepted responsibility for his actions;
- (b) the absence of a conduct sheet or any other indication of prior convictions;
- (c) the solid performance consistently demonstrated over a number of years by Corporal Cartwright in the Performance Evaluation Reports entered into evidence;
- (d) the difficult financial circumstances that Corporal Cartwright was currently in and his financial obligations for child support; and
- (e) the court should also take into account any indirect consequences of the finding of guilty, which in this case given that Corporal Cartwright is a member of the military police will include a credentials review by the Military Police Credentials Review Board.

[13] The principles of sentencing that the court considers should be emphasized in the present case are denunciation, and general and specific deterrence. As I said in the case of *Corporal Laliberté*:

.... Confidence in the honesty, integrity, discipline, maturity and good judgment of members of the Military Police in the Canadian Forces, both by the general public, other Canadian Forces members in general, and other members of the Military Police in particular, is critical to the effectiveness of the Military Police in the fulfilment of their important functions. Members of the Military Police are rightly held to a very standard.

[14] The actions of Corporal Cartwright constitute a significant derogation from those standards. He must never repeat this action and other members of the military police must also understand that such actions are simply not tolerable and be deterred from committing them.

[15] The prosecution and defence have made a joint submission for a sentence comprising of a reprimand plus a fine of \$5,000. Defence counsel requests that the fine be payable in monthly instalments of \$150 per month pointing to the very straitened financial circumstances of Corporal Cartwright to justify the extended period it would take to pay the fine.

[16] In the case of a joint submission, as reiterated by the Court Martial Appeal Court in the case of *R v Private Chadwick Taylor*, 2008 CMAC 1, the question that the court must ask itself is not whether the proposed sentence is one that the court would have awarded absent the joint submission; rather the court is required to consider whether there are cogent reasons to depart from the joint submission; that is, whether the proposed sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[17] The appropriate potential range of sentence for this offence runs the gamut from severe reprimand to reprimand to a fine either together with a reprimand or not. I have carefully canvassed all of the cases submitted to me by counsel as precedents for sentencing. The submissions of counsel in this case are at the higher end of the spectrum with regard to the quantum of the fine, but are broadly consistent with the range of those particular precedents. The fact that the offender is a member of the military police is also a significant aggravating factor in this case.

[18] The court does not consider that the proposed sentence is unfit, unreasonable, would bring the administration of justice into disrepute, or be contrary to the public interest. Thus the court will accept the joint submission of counsel for the prosecution and defence as the sentence.

**FOR THESE REASONS, THE COURT:**

[19] **FINDS** you guilty of the fourth charge on the charge sheet.

[20] **SENTENCES** you to a reprimand and a fine of \$5,000, payable in monthly instalments of \$150 commencing on 1 October 2014.

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**Counsel:**

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Counsel for Her Majesty the Queen

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Co-counsel for Corporal B.D. Cartwright

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