



## COURT MARTIAL

**Citation:** *R v Caza*, 2014 CM 3002

**Date:** 20140212

**Docket:** 201326

General Court Martial

Canadian Forces Base Trenton  
Trenton, Ontario, Canada

**Between:**

**Her Majesty the Queen**

and

**Corporal R.W. Caza, Offender**

**Before:** Lieutenant-Colonel L.-V. d'Auteuil, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal Caza, having accepted and recorded a plea of guilty in respect of the second, fourth and fifth charges, the court now finds you guilty of these charges. Having been found guilty by this court, further to a full trial of the first and the third charge, then the court has no other charges to deal with.

[2] It has been a long trial and we are at the end of it, and it is now my duty as the military judge presiding at this General Court Martial to determine the sentence.

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct or in a more positive way, to see the promotion of good conduct. It is through discipline that an Armed Force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. It also ensures that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It has been long recognized that the purpose of a separate system of a military justice or tribunal is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and the morale among the Canadian Forces as it has been established in *R v Généreux*, [1992] 1 SCR 259, at page 293. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[5] Here in this case, the prosecutor recommended through the court to sentence you to imprisonment for a period of 90 days, dismissal from Her Majesty's service, and to a reduction in rank to Private. On the other end, your defence counsel suggested to the court that a reduction in rank to the rank of Private would meet the justice requirement in the circumstances, and if for any reason the court comes to the conclusion that imprisonment is part of the sentence, then he joined with the prosecution requesting the court to suspend the carrying into effect of the sentence of imprisonment.

[6] Imposing a sentence is one of the most difficult tasks for a judge. As the Supreme Court of Canada recognized in *Généreux* in order:

... To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently...

It emphasizes that in a particular context of the military justice:

... Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engage in such conduct.

[7] However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstance of the case. As I mentioned earlier, any sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[8] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- (a) to protect the public, which includes the Canadian Forces;
- (b) to denounce unlawful conduct;
- (c) to deter the offender and other persons from committing the same offences;
- (d) to separate offenders from society where necessary; and

- (e) to rehabilitate and reform offenders.

[9] When imposing a sentence, a military court must also take into consideration the following principles:

- (a) a sentence must be proportionate to the gravity of the offence;
- (b) a sentence must be proportionate to the responsibility and previous character of the offender;
- (c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (d) an offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate in the circumstances. In short, the court should impose a sentence of imprisonment or detention only as a last resort as it was established by the Court Martial Appeal Court and in Supreme Court of Canada decisions; and
- (e) lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[10] I came to the conclusion that in the circumstances of this case, sentencing should focus on the objectives of denunciation and general deterrence.

[11] Here the court is dealing with three types of offences: one is desertion contrary to section 88 of the *National Defence Act*; the other one is absence without leave, contrary to section 90 of the *National Defence Act*; and the third one is failing to comply with a condition imposed under Division 3 by a custody review officer, contrary to section 101.1 of the *National Defence Act*. All those types of offences refer directly to some ethic principles such as responsibility and reliability.

[12] In 2012, Corporal Caza was a member of 424 Transport and Rescue Squadron in Trenton. This unit is a priority one unit, which means that it is an operational unit as described by its own commander before the court. On 20 August 2012, Corporal Caza did not report to work. She was arrested on 3 September of the same year and released with conditions. She went through an inpatient programme for drug addiction in British Columbia during two weeks in the fall of 2012. She was also placed on counselling and probation in relation to her use of drugs on 14 December 2012. She did not report again to work on 21 January 2013 and she was arrested on 31 July 2013. During that second period of absence, she failed to comply with three conditions: first, to report daily at 0800 hours to her place of work to her immediate supervisor of rank of Master Corporal or above; second, to not communicate with Mr Richard Booth; and third, not consuming any drugs not prescribed.

[13] I would say that the testimony of Major Nugent was a key element on sentence. He described extensively the situation of Corporal Caza regarding her addiction to drugs and alcohol. He told the court that from his perspective, Corporal Caza was enrolled with some kind of pre-existing condition regarding her addiction to drugs and alcohol. He described the fact that the Canadian Forces health care system has provided support to her in various ways and manner, providing access to psychiatrists, social workers, addiction counsellors, and inpatient treatment, including the one that Corporal Caza went through recently. He clearly established before the court that Corporal Caza has a physical and psychological dependence to drugs and alcohol.

[14] Also through various testimonies before the court, it is clear that Corporal Caza is a smart and an intelligent person. She is very skilled, and up to the time she got in trouble with her addiction, she was considered a hard and good worker at the unit. As I mentioned earlier during my exchange with counsel, something happened in the summer of 2012 that triggered the addiction of Corporal Caza. So far the problem that triggered that situation is still unknown, but it is clear that prior to 2012 things went well as far as the court is concerned.

[15] Major Nugent also established that Corporal Caza still has mental issues to deal with and that the transition period to civilian health care services is possible in the sense that he has connections that would help and support clearly Corporal Caza if she has to return to civilian life. Also he was able to place her on a priority list at a high level in order to make sure that if she is released from the Canadian Forces, some people will be able to take care of her. Also I consider the fact that it is clear that Corporal Caza is aware of her problems and she does not hide the issues she has, and from a health perspective for treatment, I think it is a positive attitude that should stay. Also the court was told that she is the main support for her brother at home, who is living with her.

[16] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors:

- (a) the court considers as aggravating the objective seriousness of the offences. The offence you were charged with was laid in accordance with section 88 of the *National Defence Act*; this offence is punishable by imprisonment for life. Also you were charged with offences in accordance with sections 90 and 101.1 of the *National Defence Act*; these offences are punishable by imprisonment for less than three years or to less punishment;
- (b) the court has considered the subjective seriousness of the offences, and for the court there are three things:
  - (i) the breach of trust. Becoming unreliable in the Canadian Forces is something very serious, and I am pretty sure that you know that, I do not have to expend too much on this, but the fact is that

you left your unit twice. And the first time for a short period of time, but the second time for a long period of time. You also did not respect three conditions for your release after your arrest, and it reflects the fact that people, your peers, your unit could not count on you in order to perform the task and the mission. Also staying in the breach of trust, there is a responsibility aspect. Through the evidence it is clear that you did not care about the consequences. You may have, I am not saying you did not, but from what I heard and what I have seen, basically your job, your task was not your priority at that time, and it is part of the breach of trust and must be considered as an aggravating factor.

- (ii) There is also, as a second factor, the length of your absence. The first time, almost two weeks, and the second time was over six months and could have been longer if, or as a matter of probably of coincidence, you had not been arrested, this must be considered as an aggravating factor too.
- (iii) And finally, there is the premeditation. You were AWOL for, I think it is 11 days, and you went through an inpatient programme, you were put on counselling and probation so you were warned of the consequences if you were unable to deal with your personnel problems and failing to attend work despite that you planned and you repeated that offence of being AWOL, and worse, you failed to comply with three conditions. This is not something that happened out of the blue like this; it was not sudden. It is something that required some planning, and for that reason I have to consider this set of facts of supporting premeditation as an aggravating factor too.

[17] Having said that, there are also circumstances that mitigate the sentence:

- (a) there is your guilty plea on the second, the fourth, and the fifth charge. A guilty plea is, from the court's perspective, a clear genuine sign of remorse, and it also discloses that you are taking full responsibility for what you did regarding those charges and that you want to stay a valid asset in Canadian society;
- (b) there is your age, 31 years old. You are still young and you still have a future, and I am probably not the first one to tell you that, but it is in your own hands and you have to believe that you still have a future;
- (c) contrary to what was mentioned by the prosecution, I consider the fact that you had to face this court martial as a mitigating factor. First, from your commanding officer's testimony, I take the fact that it is very unusual that a court martial will take place in the unit. If I am correct,

over a period of two years two people were charged in your unit, and it would include yourself. So it still an unusual event that took place in the presence of your peers, some of your colleagues, and from the court's perspective, it has no doubt had a very significant deterrent effect on you and on them. The message is that the kind of conduct that you have displayed would not be tolerated in any way and will be dealt with accordingly;

- (d) I had also to consider the time you have spent on pre-trial custody, 78 days, and the conditions that took place while you were detained;
- (e) also I have to consider as a mitigating factor the fact that you have problems with addiction to drugs and alcohol. It's part of the picture, it is there, and it is something you are fighting with, and it must be considered in that way;
- (f) also there is the fact that you will get a criminal record for what you did. It carries a consequence that is often over looked at because people usually don't notice it, there is a criminal record further to a conviction by a court martial, and it may have a huge consequence; and
- (g) I have also to consider the absence of any annotation on your conduct sheet. The conduct sheet is there in the military system, administrative system, to reveal the good things and bad things you have done during your career, and there is no annotation of any similar conviction or any conviction at all, so, from my perspective, it is something that I have to consider too.

[18] Now as you heard, the prosecution came with the proposal of imprisonment for a period of 90 days, so considering the fact that this court must impose a sentence of incarceration to Corporal Caza, first as I mentioned earlier, going through the principles that this court has to consider, it should be used as a sanction of last resort. The Supreme Court of Canada specified that incarceration under the form of imprisonment is adequate only when any other sanction or any combination of sanctions is not appropriate for the offence and the offender. The court is of the opinion that those principles are relevant in a military justice context and they were confirmed in the decision of court in *Baptista*, 2006 CMAC 1.

[19] Considering the nature of the offences, especially the offence of desertion, but not just that one, the applicable sentencing principles, mainly denunciation and general deterrence, and also the aggravating and mitigating factors that I have just mentioned earlier, I come to the conclusion that incarceration in this case would constitute the minimum necessary punishment for those offences.

[20] Now the question is what type of incarceration? The military justice system has disciplinary tools such as detention which seeks to rehabilitate service detainees and re-

instil in them the habit of obedience. I would consider that as an obligation in the circumstances of this case, mainly because of your addiction problem, from a psychological and physical perspective, I do not think that you have a huge issue with disobedience and there is not need to re-instil the circumstance of the habit of obedience. I think it would be more appropriate for the court to consider imprisonment in the circumstances of this case and from the court's perspective it would be the only appropriate sanction.

[21] So what would be the duration of such sentence in order to protect the public and maintain discipline? It is clear that the court wants to send the message that such conduct is clearly unacceptable and may constitute a threat to the efficiency and morale if such a thing is not discouraged.

[22] The Canadian Forces must be in a position to accomplish its mission at any time and in any circumstance, so duration of six months contrary to what was suggested by the prosecution would clearly reflect that message.

[23] It was also suggested by the prosecution to combine some other punishments that are allowed by the provisions of the *National Defence Act*.

[24] The first one I want to consider is reduction in rank. It was suggested by the prosecution to the court to impose to you a reduction in rank to the rank of private. From the Court Martial Appeal Court decision of *R v Fitzpatrick*, 1995 CMAJ 9, and also from the same court, the decision of *Reid v R: St-Clair v R*, 2010 CMAJ 4, at paragraph 39, reduction in rank is a pure military sentence that reflect the loss of trust in the offending member. And in the context presented by this court, I think this is where we are at, this loss of trust, despite numerous attempts to support you, I think this sentence would reflect exactly that. Despite what people may think, you have a key role in the Canadian Forces, in your trade, in that unit and you were warned many times and I think people are at that stage from a working perspective.

[25] Also, it was suggested to me to consider dismissal from Her Majesty's service. If I understand correctly from the prosecution, it would serve to denunciate the fact that you were not fulfilling your role profiling in a crew responsible for supporting those who are tasked to save lives. You did not have a direct role, but you had a role in that. In some ways, from a working perspective, you betrayed your unit, your peers, and the confidence of a number of people around you. Considering the very nature of the offence of desertion and considering your unreliability from a working perspective, the combination of reduction in rank and dismissal would then bring at a higher level such denunciation and from the court's perspective it would fit that.

[26] Now two things: first, on purpose, I have mentioned trust and reliability in your working environment does not mean that as an individual people do not have trust in you, and it includes me. I think people trust you well because they have put in a lot of effort in order to help you, to get you out of this problem. Which is, from my perspective, from what I heard, that you have a long, long road to go, but you have to

begin somewhere. From a personal perspective, I think you can do it. Having said that, it was suggested by both counsels that I suspend the sentence of imprisonment.

[27] I would like to mention the fact that in some decisions I have provided some factors to make such determination. The most recent one was the court martial of Private Vezina (see *R v Vezina*, 2013 CM 3015). So it was suggested that I suspend the sentence of imprisonment by using my authority, under section 215 of the *National Defence Act*, because it is warranted on account of the exceptional circumstances that the offender allegedly demonstrated in this case. Section 215 of the *National Defence Act* reads as follow:

Where an offender has been sentenced to imprisonment or detention, the carrying into effect of the punishment may be suspended by the service tribunal that imposed the punishment.

[28] This section is in Division 8 of the Code of Service Discipline in the *National Defence Act*, which contains the provisions applicable to imprisonment and detention. The suspension of a punishment of imprisonment is a discretionary and exceptional power that may be exercised by a service tribunal, including a court martial. This power is different from the power provided by section 731 of the *Criminal Code*, which allows a civilian court of criminal jurisdiction to suspend the passing of sentence while subjecting an offender to a probation order or the power provided by section 742.1 of the *Criminal Code* on imprisonment with conditional sentence, which allows a civilian court of criminal jurisdiction to sentence an offender to serve a punishment of imprisonment in the community.

[29] The *National Defence Act* does not contain any particular criteria for the application of section 215. To this day, interpretation by courts martial of its application is quite clear and has been established by various military judges in other cases. As a military judge, I articulated my approach concerning this matter in the court martial of *R. v. Paradis*, 2010 CM 3025, and reiterated it in *R. v. Masserey*, 2012 CM 3004 and *Vezina*.

[30] Essentially if the offender demonstrates on a balance of probabilities that her particular circumstances or the operation requirements of the Canadian Forces justify the necessity of suspending the sentence of imprisonment or detention, the court will make such an order. However, before doing so, the court must consider, once it has found that such an order is appropriate, whether or not the suspension of that sentence would undermine the public trust in the military justice system as part of the Canadian justice system in general. If the court finds that it would not, the court will make the order.

[31] It has been clearly established that Corporal Caza has a drug addiction problem and the source says is not just physical, but psychological as well. She went under treatment recently and it looks that it was efficient, but in order to stay and succeed with her treatment, she has to do this under specific supervision of medical authorities and more specifically under the supervision of a physician. In order to make it efficient, I



would say, she needs access to her treatment and to this kind of supervision. She also is the support for her brother at home. The access to the treatment is very limited according to the testimony of Major Nugent. Serving imprisonment would have a huge impact on her ability to come through the next steps in her life and rehabilitation.

[32] Despite the fact that you did not testify, which is your legal right and I do not have any problem with that, I got from people that came before me that you are able to succeed and change. There is something really deep in you that wants to succeed. You are an open-minded person concerning your problems and you recognize them; you never hid those problems at all, and it is very clear that you are trying to get on with your life in one way or the other.

[33] Transition from military to civilian life would be easier, according to the evidence that was adduced before me, from a treatment perspective and probably some other perspective, so I have come to the conclusion that Corporal Caza demonstrated, on the balance of probabilities, that her particular circumstances justify the necessity of suspending the sentence of six months of imprisonment and I am of the opinion that the suspension of this sentence will not undermine the public trust in the military justice system considering those circumstances. So I will make such an order as to justify both counsels to suspend the sentence of six months of imprisonment.

[34] Many times people around you have tried to help you, hoping that you will, in a way or another, wake up and make some good with your life because I got from people here that you are a good person. I hope you will learn something through the trial, and if it has to change something in your life, I think it is for good. I do not think anybody wishes that anyone else go through something like this, and it will be the end of a chapter, but there is another one that will come, and I think you are strong enough to go through it.

**FOR THESE REASONS, THE COURT:**

[35] **FINDS** you guilty of the first, second, third, fourth and fifth charge on the charge sheet.

[36] **SENTENCES** you to imprisonment for a period of six months, reduction in rank to the rank of Private, and to dismissal from Her Majesty's service. And the court suspends the carrying into effect of the punishment of imprisonment for a period of six months.

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**Counsel:**

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