

Citation: *R. v. ex-Private C.M. Grenier*, 2005 CM 44

Docket: S200544

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE KINGSTON**

Date: 28 November 2006

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**EX-PRIVATE C.M. GRENIER
(Offender)**

SENTENCE

(Rendered orally)

[1] Mr Grenier, having accepted and recorded your plea of guilty to charges No. 4, 5, and 6, the court now finds you guilty of these charges. I have already found you not guilty of charges 1, 2, and 3, since the prosecution chose not to present any evidence for these charges.

[2] The Statement of Circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of the offences. Your testimony has also provided me with further evidence to assist in the determination of the appropriate sentence in this case.

[3] The principles of sentencing which are common to both courts martial and criminal trials in Canada have been expressed in various ways. Generally, they are founded on the need to protect the public, and the public, of course, includes the Canadian Forces.

[4] The primary principles are the principles of deterrence, that includes specific deterrence in the sense of deterrent effect on you, personally, as well as general deterrence; that is, deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct and,

last but not least, the principle of reformation and rehabilitation of the offender. The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[5] The court has also considered the guidance, and it is guidance as it is not binding upon the court for the purpose and principles of sentencing, as they are set out in section 718 to 718.2 of the *Criminal Code of Canada*. Those purposes are: to denounce unlawful conduct; to deter the offender and other persons from committing offences; to separate the offender from society, where necessary; to assist in rehabilitating offenders; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders in acknowledgement of the harm done to victims and to the community.

[6] The court is also required, in imposing a sentence, to follow the directions set out in QR&O article 112.48, which obliges it, in determining a sentence, to take into account any indirect consequences of the finding or of the sentence, and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[7] The court has also given consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline.

[8] The court must also remember that the ultimate aim of sentencing is the restoration of discipline in the offender and in military society. Discipline is that quality that every CF member must have which allows him or her to put the interests of Canada and the interests of the Canadian Forces before their personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences.

[9] The Court Martial Appeal Court decision in *R. v. Dixon*, 2005, CMAC-477, provides guidance to this court in the determination of the proper sentence. Although the case deals with child pornography, the principles of sentencing it contains apply in any type of disciplinary proceeding. At paragraph 33 of the *Dixon* decision, the Court Martial Appeal Court states:

In the *Woroby* case, the court had chosen to resort to the imposition of a heavy fine, among the arsenal of sentencing measures, as a means of denouncing and deterring this kind of behaviour. On appeal, the Bench of the Manitoba Court of Appeal, composed of experienced judges, reviewed the sentencing principles applicable to the determination of an appropriate fine for this kind of offence where fines are imposed. It reiterated that, as requested by section 718.1 of the Code, a "sentence must be proportionate to the gravity of the

offence and the degree of responsibility of the offender". It then quoted paragraph 718.2(b) which requires that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances". In other words, it reasserted the principle of parity, equal and fundamental justice in sentencing.

[10] The Court Martial Appeal Court then said:

... I hasten to add that the military context may, in appropriate circumstances, justify and, at times, require a sentence which will promote military objectives.

[11] The prosecutor and your defence counsel agree that your sentence should include the punishment of a reprimand and a fine. They disagree on the amount of the fine and on the issuance of the weapons prohibition order, pursuant to section 147.1 of the *National Defence Act*. The prosecutor recommends a fine in the range of \$800 to \$1,200, whereas your defence counsel recommends a \$500 fine. The prosecutor recommends a general weapons prohibition order under section 147.1, but your counsel opposes it.

Mitigating Factors

[12] As indicated by the prosecutor, your guilty plea has simplified greatly these proceedings when one considers that one of the witnesses is in Turkey. You also admitted to the police that you owned these weapons. Also, you are a first-time offender, since the date of the offence pre-dates other inscriptions on your conduct sheet. I also take into consideration the VCDS Commendation you earned for your actions at CFS Alert in May 2003. You were deployed to CFS Alert from April to October 2003. It would appear that you played a critical role in fighting a major fire at the CFS Alert power plant. According to Captain Milne, you would have saved a life during this incident.

Aggravating Factors

[13] You have testified that you were in possession of some of these weapons since 1996. More precisely, you would have received from an uncle, who passed away in 1996, one brass knuckles and the butterfly knife. You acquired the other brass knuckles from eBay in 2001, and would have traded with a US soldier, in Thule, Greenland, for the spring knife or stiletto. I surmise this would have occurred sometime in 2003, when you were travelling to or from your Alert posting.

[14] The cases that were presented to me by the prosecutor and your defence counsel are of some use in determining the appropriate sentence. These cases seem to indicate that the unlawful possession of brass knuckles is deemed to be less serious than

the possession of a prohibited knife. I note that you have been found guilty of having been in possession of brass knuckles and of two different types of prohibited knives.

[15] You said in examination-in-chief that you cannot purchase a butterfly knife in Canada, nor carry it, but had to leave it home, as you said, "under the same laws as any other knife." The "NATO-issued knife," which is a spring knife or stiletto, as you described it, was found in your car. Your explanation is that you had taken it to "show your friends at the shacks on the base." This means that you consciously took that knife from your residence and went to the shacks to display your knife to your friends. Therefore, your actions in 2004 do not reflect what you say was your understanding at that time of the law concerning knives.

[16] Your decision in 2005 to basically run away from these proceedings and your conflicting explanation for the reason that you were late for today's court martial demonstrate to me that you do not show much respect for judicial proceedings or for the law.

[17] I believe that the sentence imposed by this court must incorporate the principle of specific deterrence, because your actions in 2004 and in 2005 indicate that you need a sentence that will denounce your unlawful conduct and deter you from committing such offences in the future.

[18] The court believes this sentence must also focus on general deterrence and denunciation. Members of the Canadian Forces, and more specifically the individuals that were present when you showed your knife to your friends at the shacks, as well as those who heard the stories concerning this prohibited weapon, must understand that the possession of prohibited weapons will not be tolerated. Discipline within the Canadian Forces is the main preoccupation of our military justice system.

[19] Although it is not a right to possess any weapon or ammunition, the prosecution has not provided me with any evidence which would demonstrate that it is desirable in the interests of the safety of any person to make an order prohibiting you from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance, or all such things. There is no evidence that you have ever used these prohibited weapons for any purpose, nor are they associated with any other offence. Consequently, I will not make such a prohibition order.

[20] Mr Grenier, please stand up. Having taken into account the mitigating circumstances of this case, most notably your actions in Alert which earned you a VCDS Commendation, and the fact that you are a first-time offender, and the aggravating circumstances as describe previously, I sentence you a reprimand and a fine

in the amount of \$750. The fine shall be paid in monthly installments of \$75, commencing on the 1st day of January, 2007.

[21] The proceedings of this court martial in respect of ex-Private Grenier are terminated.

LIEUTENANT-COLONEL J-G PERRON, M.J.

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