



COURT MARTIAL

Citation: *R. v. Carrier*, 2009 CM 4019

Date: 20091105

Docket: 200942

Standing Court Martial

Canadian Forces Base Gagetown, Moncton Detachment
Moncton, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Master Warrant Officer J.C.C. Carrier, Offender

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identities of the persons described in this judgment as the complainants shall not be published in any document or broadcast or transmitted in any way.

Before: Lieutenant-Colonel J.-G. Perron, M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

[1] Master Warrant Officer Carrier, having accepted and recorded your plea of guilty on the second and fourth counts, the Court now finds you guilty of these counts. The Court has found you guilty of two counts of abuse of subordinates, contrary to section 95 of the *National Defence Act*. I have already ordered a stay of proceedings for the first and third counts. Counsel for the prosecution and your counsel have made a joint submission to me on sentencing and recommend that I impose a severe reprimand and a fine in the amount of \$3000, payable immediately. The final decision in determining an appropriate sentence lies with the judge, who has the right to dismiss counsel's joint submission. However, I must accept the joint submission of counsel unless it is found to be inadequate, unreasonable or contrary to public order or would bring the administration of justice into disrepute.

[2] As indicated in paragraph (2) of article 112.48 of the Queen's Regulations and Orders for the Canadian Forces, I also took into consideration any indirect consequence of the finding or of the sentence and the need to impose a sentence commensurate with the seriousness of the offence and the offender's record.

[3] It is recognized that, in order to contribute to one of the key objectives of military discipline, the sentencing objectives and principles are the following:

first, the protection of the public, and the public includes the Canadian Forces;

second, the punishment and denunciation of the offender;

third, the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences;

fourth, it is sometimes important to separate the offender from society, including from members of the Canadian Forces, and this would mean imprisonment or detention;

fifth, the rehabilitation and reform of the offender;

sixth, the proportionality and seriousness of the offences and the degree of responsibility of the offender;

seventh, consistency in sentencing;

eighth, the imposition of a custodial sentence, either detention or imprisonment, only once the court is satisfied that this is in fact the sentence of last resort applicable in the circumstances; and

finally, the court shall consider any relevant aggravating or mitigating factors in the circumstances relating to the offence and the personal situation of the offender.

[4] To determine what constitutes the appropriate sentence in this case, I took into account the circumstances surrounding the commission of the offence as revealed in the statement of circumstances, which you have acknowledged to be true. I also considered the evidence that was filed, the case law and the submissions by counsel. I analyzed these various factors in light of the objectives and principles applicable in sentencing.

[5] On December 10, 2008, while attending an appreciation dinner for the soldiers of your unit, you touched the genitals of T.J. and of D.C. without their consent. You did this at the combined mess of the base in Moncton. You approached each victim and, without saying a word, committed these acts. Each victim was disturbed or uncomfortable as a result of your actions. D.C. felt uncomfortable at the unit following this incident. He filed a harassment complaint against you. T.J. was very disturbed by this incident. He felt

nervous when using the unit's washroom, which he shared with you, and did not want to associate with you. He felt violated. He filed a harassment complaint against you. You hold a position of authority over the victims, in terms of their rank and their jobs within the unit.

[6] Having summarized the main facts of this case, I will now concentrate on sentencing. Therefore, in considering what sentence would be appropriate, I took into consideration the aggravating and mitigating factors that follow. I consider the following to be aggravating factors.

First, your rank. You were one of the most senior non-commissioned officers in your unit and should be setting the example for your subordinates.

Second, your actions undermined the existing trust between you and the victims, your subordinates.

Third, the nature of your actions. Any breach of a person's integrity is unacceptable; however, a breach of anyone's sexual integrity is much more serious. Your actions had a real effect on each of the victims.

The maximum penalty for this offence is imprisonment for less than two years. The Code of Service Discipline contains 60 purely service offences, found at sections 73 through 129. The maximum penalties for these offences are imprisonment for life for 19 offences, imprisonment for two or more years for nine of these offences, dismissal with disgrace from Her Majesty's service for five of these offences and imprisonment for less than two years for 27 of these offences. Therefore, objectively, this offence, section 95, can be considered one of the less serious offences of the Code of Service Discipline, given the maximum penalty of two years less a day. That said, abusing a subordinate can have serious consequences on a unit's discipline, and therefore on the efficacy of said unit. This is the subjective aspect of the offence's seriousness. Your actions affected these two victims and their feeling of security within the unit. As such, I consider your actions a severe aggravating circumstance and subjectively view your offence as serious.

[7] I will now examine the mitigating factors.

You have admitted your guilt. An admission of guilt, usually, shows certain remorse. Moreover, your plea saves the State large amounts of money and eliminates the need to call upon more witnesses. Furthermore, while the court considers this admission of guilt a sign of remorse on the part of the accused, this fact will be weighted accordingly. It could be of much more significance to the Court if the offender presented a sincere desire to apologize for his actions, upon realizing the magnitude of his illegal behaviour and its overall significance.

You do not have a conduct sheet, nor do you have a criminal record.

During his submissions, your counsel mentioned your medical problems and also mentioned that this incident occurred merely a few days after the letter from the psychologist, found in Exhibit 7. Thus, it appears that you went through a difficult period of anxiety disorder and depression. It seems that these problems arose as a result of your deployment to Afghanistan. Your behaviour on 10 December was a significant lapse in judgment, seemingly due, in part, to your medical condition. I say in part because it is my understanding that your consumption of alcohol throughout that evening likely also played a part in this affair. As to the purpose of your actions, no evidence has been presented to me. I am not capable of understanding your actions without said evidence. Furthermore, your admission of guilt and the information presented in the summary of facts has provided me with the required evidence, the required information to find you guilty.

I agree that these actions are a serious error in judgment, but this error was surely caused by a combination of your inebriation and your medical problems, as Exhibits 9, 10 and 11 tell me that throughout your career, you have always made an effort to carry out your duties as a senior non-commissioned officer as required, and you have constantly tried to improve your technical knowledge.

[8] Having closely examined the parties' joint submission, I am of the opinion that, given the particular facts of this case, it properly incorporates the sentencing principles and that the choice of sentence is the lightest possible sentence to ensure the protection of the public and the maintenance of discipline in the circumstances of this case. Considering the circumstances surrounding the commission of these offences and your past record, the Court has concluded that the following sentence is just and appropriate.

[9] Master Warrant Officer Carrier, I sentence you to a severe reprimand and a fine of \$3000. This fine must be paid immediately.

Counsel:

Major J.J. Samson, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant(N) P. Desbiens, Directorate of Defence Counsel Services
Counsel for Master Warrant Officer Carrier