Citation: *R. v. Private S.P. Bridger,* 2009 CM 4013

Docket: 200912

STANDING COURT MARTIAL
CANADA
ONTARIO
PETAWAWA

Date: 10 June 2009

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

HER MAJESTY THE QUEEN
v.
PRIVATE S.P. BRIDGER
(Offender)

SENTENCE
(Rendered orally)

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[1] Private Bridger, stand up. Private Bridger, having accepted and recorded your plea of guilty to charge number one and number two, the court now finds you guilty of these charges. The court must now determine a just and appropriate sentence in this case. You may be seated.

[2] The Statement of Circumstances to which you formally admitted the facts as conclusive evidence of your guilt; your testimony; the testimony of Warrant Officer Bolduc, one of the CFNIS investigators in this case; and the testimony of Mrs Musclow, a mental health nurse, provide this court with the circumstances surrounding the commission of these offences. Your counsel has presented five exhibits and the prosecutor presented three exhibits during the sentencing phase of this trial.

[3] On 14 March 2008, you told your unit padre that you had been the victim of a sexual assault committed by Private Zeitoun while you were on exercise in Texas. That same day, you reported to a member of the CFB Petawawa Military Police section that you had been the victim of a sexual assault. The matter was referred to the CFNIS because of the serious nature of the allegations.

[4] On 31 March 2008, Petty Officer 2nd Class Fiset and Warrant Officer Bolduc,

investigators with the CFNIS, began planning their investigation. On 3 April, they interviewed you, and you described the sexual assault that you alleged occurred on 1 March in Fort Bliss, Texas. Private Zeitoun was arrested on 4 April, and after having spoken to a defence counsel, refused to participate in an interview with the CFNIS. He was subsequently released under conditions by the unit custody review officer. Approximately 40 minutes following his release, Private Zeitoun returned to the MP section and requested to speak with the CFNIS investigators, where he denied assaulting you and he described your relationship while you were both in Texas which included consensual sexual intercourse.

[5] On 7 and 8 April, the CFNIS investigators interviewed four witnesses at CFB Petawawa. On 8 April, the CFNIS investigators conducted a cautioned interview of Private Bridger. This interview lasted approximately three hours. Near the end of that interview, you admitted making the false accusation against Private Zeitoun after having spoken with a defence counsel and with your husband. You then asked the CFNIS investigators if you could meet with Private Zeitoun to apologize. Private Zeitoun came to the MP section and you apologised for having falsely accused him of sexual assault.

[6] The prosecutor has recommended a sentence of 30 days of detention. He argued that the sentencing principles of general deterrence and denunciation are the most important principles in this case. Your counsel has recommended a sentence of a severe reprimand and a fine in the amount of $2,500, he has also recommended that the sentence of detention be suspended if the court concludes that detention is the appropriate punishment.

[7] The principles of sentencing, which are common to both courts martial and civilian 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. 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 these factors.

[8] The court has considered the guidance set out in ss. 718 to 718.2 of the *Criminal Code of Canada*. Those objectives 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 and acknowledgment of the harm done to victims and to the community.

[9] The court is also required, in imposing a sentence, to follow the directions set out in article 112.48 of Queen's Regulations and Orders 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.

[10] The court must impose a sentence that should be the minimum necessary sentence to maintain discipline. 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 personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences such as injury and death. I describe discipline as a quality, because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training and practice, it is an internal quality that is one of the fundamental prerequisites to operational efficiency in any armed force.

[11] I will now set out the mitigating circumstances and the aggravating circumstances that I have considered in determining the appropriate sentence in this case. As to the mitigating circumstances, I note the following:

> You do not have a conduct sheet; you are a first-time offender. Defence counsel stated that you had instructed him to act as quickly as possible, and that you had expressed a desire to plead to these charges at the earliest occasion.
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> You have testified before this court. You have explained your actions and you have expressed your remorse. On 8 April 2008, you asked the CFNIS investigators to contact Private Zeitoun and ask him to come to the Petawawa Military Police station so that you could apologize to him in person.
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> While the court has heard some testimony from Warrant Officer Bolduc concerning your telephone discussion with your husband pertaining to the arrest of Private Zeitoun and your laughter during that conversation, you provided an explanation for that laughter. Although that situation does cause this court to question the exact nature of the conversation and of the laughter, the court finds that the prosecution has not proven this fact beyond a reasonable doubt, and the court will not consider it as evidence that would tend to demonstrate a lack of remorse.
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> The prosecutor asserts that Private Bridger waited and was too late to retract her false accusation. The court disagrees with that statement. Therefore, the court believes that you do regret your actions, that you do recognize the seriousness of

your actions and of the possible consequences of such false accusations, and that you take full responsibility for these offences. Your plea of guilty has also saved time and money.

You have invested a good deal of effort since March 2008 to deal with your personal problems that are at the root cause of these offences. You have met with a base addition counsellor, with a mental health nurse, and with a base social worker to deal with your problems. You have stopped drinking and you have attended Alcoholics Anonymous meetings and Al-Anon meetings to deal with your drinking problems and with your emotional and psychological problems that emanate from your childhood as a child of an alcoholic father and of a depressed mother. For the first time in your life, it would appear that you are facing your problems instead of lying and trying to run away from them.

[12] I consider the following to be aggravating circumstances:

Any false accusation will usually result in a waste of valuable resources in terms of unnecessary investigations by members of the military police and a waste of money. Such false accusations may lead to extensive investigations, a charge laying process, and ultimately, a court martial; all an unacceptable misuse of scant resources. It represents an abuse of the military justice system .This abuse cannot be tolerated or condoned.

In the present case, the investigation of the false allegation lasted approximately five to eight days, and involved the interviews of four witnesses at CFB Petawawa. This CFNIS investigation cannot be considered extensive or exceptional. Nonetheless, your false allegations did monopolize the time of two CFNIS investigators. These investigators had to travel to CFB Petawawa from their normal place of duty to conduct that investigation. Your false allegation did cause the expenditure of a certain amount of money associated with the transportation and normal operational costs of such investigations.

[13] The objective gravity of an offence is usually judged by the maximum sentence Parliament has set out for the offence. The more serious the offence, the more severe is the maximum punishment. The *Criminal Code of Canada* provides for a maximum sentence of five years imprisonment for the offence of public mischief. I agree with the Chief Justice of Alberta, the Honourable Justice Fraser, when she asserts in *R. v. Ambrose*[1], at paragraph 102, that mischief is not one of the more serious crimes under the *Criminal Code*. Numerous other crimes involving serious violence against the person, certain firearm offences and certain property crimes carry much more serious sentences.

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[1](2000) A.J. No. 1148

[14] The Code of Service Discipline[2] contains 60 offences at sections 73 to 129. Twenty-seven of these offences have as a maximum punishment imprisonment for less than two years, nineteen offences have imprisonment for life as a maximum punishment, nine offences have imprisonment for two years or more as a maximum punishment and five offences have dismissal with disgrace from Her Majesty's service as a maximum punishment. The maximum punishment under section 96 of the *National Defence Act* is imprisonment for less than two years. Thus this offence actually ranks as one of the least serious offences found in the Code of Service Discipline. Therefore, the court does not consider the objective gravity of each offence to be a serious aggravating factor in this case.

[15] Notwithstanding the previous comments on the objective gravity of these offences, the court does find that the subjective gravity of these offences is serious. Falsely accusing another soldier of sexual assault is very serious. Such false allegations may have a significant impact on the life of the person falsely accused. The stigma attached to such allegations is profound. Also, such false accusations attack one of our core military principles - trust. Soldiers must trust each other because it may mean the difference between life and death in a theatre of operations; such trust is built throughout a career. A person's reputation in the Canadian Forces is extremely important; we live in a very closed society, false allegations can easily create rumours that can have devastating effects on the victim of such allegations. These false rumours can also affect the level of trust other soldiers would be willing to put in the falsely accused person.

[16] Private Zeitoun was arrested on 4 April and he was released under conditions on the same day. He was not charged. On 8 April, you admitted you had falsely accused him and you apologized to him in person at the Military Police station. While one could logically infer that Private Zeitoun was probably under a certain amount of stress during those four days, this court has not been provided with any evidence whether these false allegations and his arrest and release under conditions had any specific adverse effects on Private Zeitoun. No evidence was presented pertaining to any possible impact on his personal life, his reputation, his health or his career. As such, the court will not speculate on this subject and will only put some weight on this aggravating circumstance, but not to the extent the prosecutor would have suggested.

[17] Cases of public mischief under the *Criminal Code* and of false accusations under the Code of Service Discipline must be dealt with in a manner that will clearly demonstrate to the offender and to the military community that such offences will not be condoned or tolerated. The denunciation of such conduct and general deterrence must be at the forefront during the sentencing phase of such trials.

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[2] *National Defence Act*, R.S. 1985, c.N-5, Part III

[18] On this point, I find the following extract from the 1996 Supreme Court of Canada decision in *R. v. M.(C.A.)*[3], at paragraphs 81 and 82 to be quite apropos. I quote the Right Honourable Chief Justice Lamer when he stated:

> Retribution, as well, should be conceptually distinguished from its legitimate sibling, denunciation. Retribution requires that a judicial sentence properly reflect the moral blameworthiness of that particular offender. The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. As Lord Justice Lawton stated in *R. v. Sargeant*, (1974) 60 Cr. App. R. 74, at p. 77: "society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass." The relevance of both retribution and denunciation as goals of sentencing underscores that our criminal justice system is not simply a vast system of negative penalties designed to prevent objectively harmful conduct by increasing the cos t the offender must bear in committing an enumerated offence. Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated. In short, in addition to [achieving] negative consequences to undesirable behaviour, judicial sentences should also be imposed in a manner which positively instills the basic set of communal values shared by all Canadians as expressed by the *Criminal Code*.
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> As a closing note to this discussion, it is important to stress that neither retribution nor denunciation alone provides an exhaustive justification for the imposition of criminal sanctions. Rather in our system of justice, normative and utilitarian considerations operate in conjunction with one another to provide a coherent justification for criminal punishment. As Gonthier J. emphasized in *Goltz,* Supra, at p. 502, the goals of the penal sanction are both "broad and varied." Accordingly, the meaning of retribution must be considered in conjunction with the other legitimate objectives of sentencing, which include (but are not limited to) deterrence, denunciation, rehabilitation and the protection of society. Indeed, it is difficult to perfectly separate these interrelated principles. And as La Forest J. emphasized in *Lyons*, the relative weight and importance of these multiple factors will frequently vary depending on the nature of the crime and the circumstances of the offender. In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.

[19] At paragraph 92 of that decision, Chief Justice Lamer also noted that Parliament has explicitly vested the specialized discretion in sentencing judges. He stressed that there is no such thing as an uniform sentence for a particular crime. He further stated that:

> Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in this country, as the "just and appropriate" mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred.

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[3] (1996) 1 S.C.R. 500

[20] I will now examine the case law presented by the prosecutor. I find the court martial cases presented are of limited use to the court since the complete factual basis for each case is not present in the portions of the courts martial included in the prosecutor's book of authority. Thus this court cannot fully evaluate all the facts and the factors that were considered by the sentencing judge in each case.

[21] In the *Private Hollingsworth* 2000 Standing Court Martial, the accused was found guilty of one charge of public mischief and of two charges of having made a false accusation for having falsely accused his immediate supervisor of having committed the offence of sexual assault. As indicated by the prosecutor, the investigation of the false accusation would have lasted three and a half months; and Private Hollingsworth did not retract his accusations. He pled not guilty and was found guilty after a complete trial. The victim of the false allegations had to testify and was questioned on her sexual behaviour during the *Hollingsworth* Court Martial. Private Hollingsworth was sentenced to a suspended sentence of 90 days detention. The court considered, amongst the other factors, the apparent lack of remorse of the offender, and the need that the sentence reflects the application of the principle of general and specific deterrence.

[22] In the *Ordinary Seaman Clark* 1983 Standing Court Martial, the accused was found guilty of one charge of having falsely accused Ordinary Seaman Sweeney of having used marijuana. Ordinary Seaman Sweeney was tried by court martial and he was found not guilty. The accused had testified at the *Sweeney* Court Martial that he had no recollection of any use of illegal drugs with Ordinary Seaman Sweeney. Ordinary Seaman Clark did not plead guilty and was found guilty after a full trial where Ordinary Seaman Sweeney testified. The fact that Ordinary Seaman Clark had attempted to change his statement to the military police before the trial of Ordinary Seaman Sweeney, and the manner he had testified at the *Ordinary Seaman Sweeney* Court Martial were considered as mitigating factors. The court sentenced Ordinary Seaman Clark to a sentence of 30 days of detention and a fine in the amount of $2,000. The court suspended the punishment of detention because of the attempt to retract the false accusation.

[23] In the *Private Britnell* 1983 Standing Court Martial, the accused was found guilty of one charge of having falsely accused Master Corporal MacPhail of having given cannabis resin to Private Britnell. The accused was found guilty after a full trial. Private Britnell was sentenced to detention for a period of four months. It would appear that Private Britnell had attempted to repudiate the false statement, and this was considered an important mitigating factor, but his actions were deemed to amount to "too little to late."

[24] In the *Acting Sub-Lieutenant Loveless* 1983 Standing Court Martial, the accused was found guilty of two charges of having falsely accused two officers of having used marijuana. The falsely accused officers were tried by a disciplinary court martial and

were found not guilty. Acting Sub-Lieutenant Loveless testified at these trials and it would appear that he, as stated by the sentencing judge "more or less repaired the damage" he had done. The fact that the accused was an officer and the need for integrity were important considerations in the awarding of a sentence of imprisonment for a period of six months.

[25] I have also considered the civilian case law presented by the prosecutor. In the *R. v. Hudon*[4],, the offender, a 18 year old woman, had accused three men of sexual assault and had described a detailed violent and perverse sexual assault. A massive investigation ensued, a number of individuals were interviewed, including family members and the spouses of the three men. One man took a polygraph test; all retained counsel. The offender admitted she lied before charges were laid. The sentencing judge found that the offender's actions caused stress and mental suffering to the men and their families, as well as a negative effect on their reputations in the small city in which they lived. The Alberta Court of Appeal found that the sentence of 15 months imprisonment was not demonstrably unfit.

[26] In *R. v. Fraser*[5], the offender was a 53 year old man with a long criminal record. He pled guilty to a charge of public mischief and to a charge of conspiring to commit the crime of trafficking in cocaine. He had falsely accused members of the Yellowknife RCMP detachment of having sexually assaulted his female friend while they were both detained after having been arrested and charged with unlawful possession of cocaine. The allegations were investigated promptly and thoroughly by the RCMP. The offender elected to be tried by judge and jury, a preliminary inquiry was held, and the offender was committed to stand trial. The offender indicated during a pre-trial conference that the trial was proceeding and subpoenas were issued for 11 witnesses, including 10 police officers and detachment guards. The offender's jury trial was scheduled to proceed on March 5, 2007. The offender pled guilty during the week of 31 January 2007. The Northwest Territory Supreme Court found that, although, it was a plea of guilty and the offender acknowledged that the accusation was false, these actions had not been taken at the earliest reasonable opportunity. The court concluded that "taking into consideration all of the circumstances of the offence committed by this offender, including the circumstances of the plea to this offence and the criminal history of the offender" it would have imposed a sentence of 18 months' imprisonment if it only had to consider that offence.

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[4](1996) A.J. No. 942

[5](2007) N.W.T.J. No. 15

[27] In *R. v. Bishop*[6], the offender, a woman, had made false allegations to the police that she had been abducted, sexually assaulted and maimed by two unknown men. The effects of this complaint were extensive. Approximately 30 police officers were involved in a seven day investigation which cost approximately $60,000, and the media were engaged to assist the investigation by seeking information from the public. The police officers closest to the investigation showed much concern and compassion for the complainant. At the end of the week-long investigation, the police concluded that the complaint had no foundation in fact. The police interviewed the offender and she admitted her false statement. The offender had made the false statements to explain to her family the various injuries she had sustained in a failed suicide attempt. The offender was suffering from a major depressive illness. The Newfoundland and Labrador Provincial Court sentenced the offender to a ten months conditional sentence.

[28] In the *R. v. Ambrose*[7], the offender falsely accused a police officer of sexually assaulting her while she was in a holding cell. Upon her release from detention, she had told her brother that she had been raped, she told a doctor she had been raped, and she made a complaint to the police. An investigation was initiated, but no charges were laid against the falsely accused police officer. She was convicted by a jury of public mischief and sentenced to imprisonment for two years less a day.

DECISION

[29] Private Bridger, stand up. I agree with the prosecution that the principles of general deterrence and of denunciation are important in this case. False accusations can have devastating effects on an innocent individual. The sentence I am about to pronounce will convey to you and to other CF members that falsely accusing another CF member of having committed an offence will carry serious consequences for the person making such false accusations.

[30] I found that the military cases presented by the prosecutor are factually very different from this case. You have pled guilty to these charges and Private Zeitoun was never charged as a result of your false accusation. No court martial was convened or conducted as a result of your allegations. I also find that the civilian cases represent very different factual scenarios.

[31] Your plea of guilty and your testimony during this sentencing phase have clearly demonstrated that you are truly remorseful. Your apology to Private Zeitoun on 8 April 2008 is also a tangible sign of this remorse. You have shown a certain level of courage

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[6](2003) N.J. No. 5

[7]Supra, note 1

by taking the witness stand and by admitting your offences and the reasons for your illegal actions. You have done so and many other offenders do not.

[32] You are in the process of dealing with your personal problems; you began your rehabilitation in March 2008. As such, the court finds there is no need for any specific deterrence in this case. The sentence I am about to impose must reflect the gravity of the offence, the blameworthiness of the offender, and the previous character of the offender.

[33] I sentence you to detention for 30 days. The circumstances surrounding the commission of these offences, the limited consequences of your actions, your remorse and the actions you have undertaken to apologize and to deal with your personal problems have convinced me that there is no need for specific deterrence, that you have begun your personal rehabilitation, and that you do not need any specific supplementary disciplinary rehabilitation usually associated with the serving of a punishment of detention. As such, I will suspend the carrying into effect of this sentence. You may sit down.

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

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