Citation: *R. v. Petty Officer 1st Class B.P. Bradt*,2009 CM 4005

Docket: 200850

STANDING COURT MARTIAL
CANADA
QUÉBEC
CENTRE ASTICOU

Date: 13 March 2009

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

HER MAJESTY THE QUEEN
v.
PETTY OFFICER 1ST CLASS B.P. BRADT
(Accused)

SENTENCE
(Rendered Orally)

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[1] Petty Officer 1st Class Bradt, at the conclusion of a full trial, the court has found you guilty of charges number 2 and 4 and has directed a stay of proceedings for charges number 1 and 3. You were found not guilty of charges 5, 6 and 7. More specifically, you were found guilty of two charges of a breach of public trust by a public officer contrary to section 122 of the *Criminal Code of Canada*. The court must now impose a fit and just sentence.

[2] In determining the appropriate sentence, the court has considered the circumstances surrounding the commission of these offences, the mitigating and aggravating circumstances presented by your counsel and by the prosecutor and the representations by the prosecution and by your defence counsel as well as the evidence presented by both counsel and the applicable principles of sentencing.

GENERAL PRINCIPLES OF SENTENCING

[3] Those principles which are common to both courts martial and civilian criminal trials in Canada are founded on the need to protect the public and the public 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 those factors.

[4] The court is required, in imposing a sentence, to follow the directions set out in paragraph 2 of article 112.48 of the *Queen's Regulations and Orders for the Canadian Forces* 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.

[5] The court has considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. The court must impose a sentence that should be the minimum necessary sentence to maintain discipline. We must remember that the ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[6] Only one sentence is imposed upon an offender, whether the offender is guilty of one more offences, and the sentence may be composed of more than one punishment.

[7] The prosecution suggests that every principle of sentencing apply in this case. The prosecution has provided this court with six cases in support of its submission that the minimum sentence in this matter is a reduction in rank to the rank of petty officer 2st class and a fine in an amount ranging between $4,000 and $8,000. Your defence counsel asserts that a sentence of a reprimand and a fine in an amount of $2,500 would represent a fair and just sentence in this case. Your counsel suggests that this fine should be paid at a rate of $200 per month.

[8] In *R. v. Angelillo*, [2006] S.C.J. No 55, the Supreme Court of Canada stated at paragraph 22:

> The principes of sentencing are now codified in ss. 718 to 718.2 Cr. C. These provisions confirm that sentencing is an individualized process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender.

[9] Also in its 1996 decision In *R. v. M(C.A.)* [1996] 1 S.C.R. 500, Chief Justice Lamer wrote at paragraph 82:

> 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.

[10] I find that these two offences represent a pattern on your part over approximately one month. You seemed to have adopted a carefree attitude towards the use of CF vehicles while you were posted to DHTC. You also do not seem to be willing to accept the consequences of you acts because it appears that you do not see any problem with having subordinates chop your firewood during working hours.

[11] The PERs, personnel evaluation reports, provided to this court describe a very competent petty officer 1st class cook before you were posted to DHTC and after you were posted from DHTC. Those PERs describe excellent technical and leadership skills as well as above average to outstanding potential. The evidence presented to this court during the trial tends to demonstrate otherwise. The PER you received while at DHTC was generally positive when commenting on your technical skills but was not so positive when commenting on your leadership skills. It would appear that this first experience in a non-Navy atmosphere since your promotion to supervisory positions proved to be a difficult adjustment.

[12] Much has been said by the assistant prosecutor concerning the nature of the unit, of its high operational tempo, of the concept of mission success applying much more in that unit than in any other unit in the Canadian Forces. The court would like to mention at this time that, although some of the witnesses did mention the high operational tempo, deployments and exercises, most of that evidence is deemed somewhat cryptic since the exact nature of the unit nor of its activities was truly described by any witness. While almost anyone who has read the local or national newspapers in the last few years would know which unit of the Canadian Forces is stationed at DHTC, this information has not been disclosed by any witness. Therefore, considering the cryptic

nature of that evidence, the court will not put as much emphasis on this aspect of this case as is suggested by the assistant prosecutor.

[13] I will now examine the mitigating factors in this case. You do not have a conduct sheet; thus you are a first-time offender. You have an unblemished career of some 25 years in the Canadian Forces and in the Navy. The Personnel Evaluation Reports or PER filed as Exhibit 10, except for the one while you were posted to DHTC are glowing in their evaluation of your performance and of your potential.

[14] I do not consider the period of time from the date of the offences to the date of trial to be a mitigating factor. I have not been provided with any evidence that would demonstrate that it is unreasonable or excessive or that it has had a negative impact on you or on the discipline of members of the food services section at DHTC.

[15] You exercised your right to plead not guilty. You were found guilty by this court at the end of a complete trial. This exercise of your right cannot be viewed in a negative manner and it cannot be considered as an aggravating factor. Canadian jurisprudence generally considers an early plea of guilty and cooperation with the police as tangible signs that the offender feels remorse for his or her actions and that he or she takes responsibility for his or her illegal actions and the harm done as a consequence of those actions. Therefore, such cooperation with the police and an early plea of guilty will usually be considered as mitigating factors. Although the doctrine might be divided on this topic, this approach is generally not seen as a contradiction of the right to silence and of the right to have the Crown prove beyond a reasonable doubt the charges laid against the accused but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usually means that witnesses do not have to testify and that it greatly reduces the costs associated with the judicial proceeding. It is also usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions.

[16] Simply put, an accused that pleads guilty at the earliest opportunity lessens the strain on the judicial resources and by doing so usually receives a benefit from this cooperation and from the acknowledgement that she or he is taking responsibility for her or his unlawful actions. An accused that pleads not guilty cannot hope to receive the same consideration from the judicial process. This does not mean that the sentence is increased because the accused has been found guilty after pleading not guilty, it only means that his or her sentence will not be affected by the mitigating factor of a plea of guilty.

[17] I have also considered the following aggravating factors: You used your position and your rank to commit these offences. These are not the actions we expect of a senior non-commissioned officer. How can we expect junior non-commissioned members to respect our laws and regulations if our Sr NCOs do not give them the proper example?

[18] These two offences were committed over a four-week period and demonstrate a clear lack of respect for the rules and for your subordinates. Your personal gain was more important to you than your responsibilities as the Kitchen Officer.

[19] I have reviewed the cases provided to me by the prosecutor. I note that the sentence in the *Cayer* and *Desmeules* decisions were the product of a joint submission by counsel. *Sergeant Cayer* was sentenced to a reprimand and a fine in the amount of $2,500 while *ex-Sergeant Desmeules* was sentenced to a severe reprimand and a $7,000 fine. They both pled guilty to one charge under s. 129 of the *NDA* for having had soldiers work on the house of *ex-Sergeant Desmeules*. The work done by these soldiers would have been renovations on the residence over a period of five consecutive days. *Ex-Sergeant Desmeules* was the only one who benefited from the work of these soldiers. These facts are much more serious than the facts in the matter at hand.

[20] I find that the *R. v. Ryan* 219 N.B.R.(2d) 287 N-B Court of Queen's Bench and *R. v. LeBlanc* 2003 NBCA 75 are also decisions that represents fact scenarios that are much more serious than this case. Each case involved a police officer. In *Ryan*, the accused pled guilty to seven charges of which four were laid under s. 122 of the *Criminal Code*, two were for stealing under $5,000 and one was for fraud under $5,000. *Ryan* was sentenced to imprisonment, the sentence was for eight months, but the sentence being eight months for each offence but to be served concurrently. *LeBlanc* plead guilty to one charge laid under s. 122 of the *Criminal Code* and ultimately was sentenced to three months imprisonment from the New Brunswick Court of Appeal. Both accused committed the offences when they were acting as police officers. The courts have always placed much emphasis on general deterrence and denunciation when dealing with police officers because police officers have taken an oath to uphold the law.

[21] Having said that, this court is cognizant of the duties imposed on Sr NCOs by Chapter 5 of Queen's Regulations & Orders as well as by the principles of leadership that require that one lead by example.

[22] I have also carefully reviewed the Standing Court Martial of *ex-Chief Petty Officer 2nd Class Tobin*. *Ex-Chief Petty Officer 2nd Class Tobin* pled guilty to one charge laid under s. 130 of the *National Defence Act* contrary to s. 122 of the *Criminal Code of Canada*. The court, in *Tobin*, had been presented with a joint submission of 30 days imprisonment to be suspended. The court sentenced *ex-Chief Petty Officer 2nd Class Tobin* to a severe reprimand and a $3,000 fine.

[23] The offence had occurred over a five-month period and the accused had not benefited at the expense of the CF. The court noted the deceitful scheme involved in the commission of the offence. The accused was a first-time offender in a 25-year career, he had pled guilty and was suffering from a serious medical condition at the time of the trial. The court also explained why, in the specific circumstances of that case, it did not think that a reduction in rank was the appropriate punishment.

[24] Petty Officer 1st Class Bradt, stand up. I believe this sentence must focus primarily on the denunciation of the conduct of the offender and on general and specific deterrence. You abused your position as Kitchen Officer and as head of the food services section; the Canadian public and the Canadian Forces must trust its members to lead their subordinates and manage their resources for the public good and not for personal benefit. You breached this trust.

[25] I do not consider the circumstances surrounding these two offences to be as serious as those in the *Cayer* and *Desmeules* Standing Courts Martial or in the *Ryan* and *LeBlanc* cases. Nonetheless, you showed a disregard for the rules respecting the use of CF vehicles as well as a lack of interest in the welfare of your subordinates when committing those offences. You used a CF vehicle and used your subordinates for your personal benefit and you were not concerned about the impact this conduct might have on your subordinates or what deprivation this might cause your unit or the Canadian Forces. This abuse of the rules and of your personnel for your personal benefit occurred on two occasions and lasted but a few hours. But the consequences of breaching the key underlying principles, such as trust, may have much longer lasting effects.

[26] This conduct must be denounced by the imposition of a sentence that will convey that message. I mention specific deterrence because you have not demonstrated to this court that you understand the consequences of your actions.

[27] Having thus considered the specific circumstances of the offences and of the offender, the mitigating and aggravating factors as well as the case law presented by

counsel, I do not believe that a sentence of reduction in rank is the appropriate minimum necessary sentence to maintain discipline and to restore discipline in the offender and in military society. The court must impose a sentence that will provide a clear message to you and to others and will assist you in taking responsibility for your offences.

[28] Petty Officer 1st Class Bradt, the court sentences you to a severe reprimand and a fine in the amount of $3,000. The fine shall be paid in monthly instalments of $250 commencing on the first day of April 2009. You may sit down.

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

Counsel:

Major B. McMahon, Regional Military Prosecutions Western Area
Captain Drebot, Articling student, Directorate Military Prosecutions
Counsel for Her Majesty the Queen

Major A. Litowsky, Directorate Defence Counsel Services
Counsel for Petty Officer 1st Class Bradt