



COURT MARTIAL

Citation: R v Lewis, 2012 CM 3010

Date: 20120822

Docket: 201209

Standing Court Martial

St-Jean Garrison
Saint-Jean-sur-Richelieu, Québec, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal D. Lewis, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Lewis, having accepted and recorded a plea of guilty in respect of the second, fourth and sixth charges on the charge sheet, the court finds you now guilty of these charges. Considering that the first, third and fifth charges are alternative charges to those for which the court found you guilty further to the acceptance and recording of your plea of guilty, and that the prosecutor concurred with the acceptance of your plea of guilty to those alternative charges that are less serious than any other and for which you pleaded not guilty to the more serious alternative charges, then the court directs that the proceedings on the first, third and fifth charges be stayed.

[2] It is now my duty as the military judge who is presiding at this Standing 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, see the promotion of good conduct. It is through discipline that an armed force ensures that its

members will accomplish in a trusting 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 long been recognized that the purpose of a separate system of 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, (see *R v Généreux* [1992] 1 SCR 259 at 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 to this court that a sentence of a reprimand and a fine to the amount of one thousand dollars would meet the justice requirements. Your counsel suggested that the court sentences you the lowest punishment in the scale of punishment, and the lowest punishment in the scale of the minor punishments available to any service tribunal, which is a caution.

[6] Imposing a sentence is the most difficult task for a judge. As the Supreme Court of Canada recognized in *Généreux* at page 293 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 emphasized that, in the particular context of military justice, "breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct." However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of a case. In other words, 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.

[7] 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.

[8] When imposing sentences, 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 the 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.

[9] I came to the conclusion that in the circumstances of this case, sentencing should place the focus on the objectives of denunciation and general deterrence. Contrary to the opinion of the defence counsel, I do not consider that the objective of rehabilitation is a paramount consideration in this case. However, it must be given some importance.

[10] Here, in this case, the court is dealing with the military offence of ill treating at three very distinctive moments on the same day, three different persons who by reason of rank were subordinate to the offender, contrary to section 95 of the *National Defence Act*. It goes at the heart of the ethical principle of ethic for each Canadian Forces member to respect the dignity of all persons, including those who are subordinates by rank.

[11] The essence of this offence is to avoid situations of abuse of authority within the Canadian Forces, which could impact on the trust, confidence and morale that must exist between soldiers in order to accomplish a mission.

[12] At the time of the events MCpl Lewis was an instructor on the Basic Military Qualification (BMQ) course, held at Canadian Forces Leadership and Recruit School (CFLRS) in Saint-Jean-sur-Richelieu.

[13] On or about 2 September 2011, candidates on the BMQ courses platoon R24 were to conduct round robin training on the cleaning and care of military equipment and quarters.

[14] Upon arrival of the course staff it became clear that members of R24 platoon did not follow or did not receive prior instructions, which were to be relayed by the course senior. Civilian clothes were piled in their cubicle, military equipment was not hanged or

folded properly, beds were not made and garbage was still in the garbage cans. Generally speaking there was a lack of neatness that was contrary to directives given.

[15] Master Corporal Lewis, a member of the staff instructing R24 candidates was briefed by Petty Officer 2nd Class Tribble and thereafter began to address the situation, instructing candidates on the proper care of their equipments and quarters.

[16] Private Brophy and Private Barbeau were in the laundry room and Ordinary Seaman Chambers was just outside the laundry room. They had been ordered to adopt the plank position, which is similar to the push-up position, but on the forearms.

[17] The first incident involved Private Brophy. Master Corporal Lewis was heard severely disciplining Private Brophy, as her cubicle was particularly disorderly. Master Corporal Lewis ordered Private Brophy to stand up. He held her garbage can high in the air between them and dumped it. Some of the contents hit her on the head.

[18] The second incident involved Private Barbeau. As Master Corporal Lewis was approaching, Private Barbeau was in the laundry room, in the plank position, as he had been ordered to be. The laundry room had a cinder block wall with a half-wall at one spot. Master Corporal Lewis was on the other side of the half-wall and threw a chair against the wall. The chair went over the half-wall and hit Private Barbeau on the back and legs. A late warning of "move" was called by Master Corporal Lewis. Master Corporal Lewis then moved to Private Barbeau's cubicle, ordered him to get up and wreaked havoc on his cubicle.

[19] The third incident involved Ordinary Seaman Chambers. When he reached his cubicle, Master Corporal Lewis ordered Ordinary Seaman Chambers to get up and stand at attention in the hallway. As his cubicle was dismantled, Ordinary Seaman Chambers was hit on the head by a binder thrown by Master Corporal Lewis. He was then told to get out of the way if he saw anything coming at him. Canex items and clothes were also thrown from the lockers.

[20] 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 three offences you were charged with were laid in accordance with section 95 of the *National Defence Act* for ill treating at three very distinctive moments on the same day, three different persons who by reason of rank were subordinate to you. This type of offence is punishable by imprisonment for a term not exceeding two years or to less punishment.
- b. Secondly, the subjective seriousness of the offences; that, for the court, covers two aspects:

- i. The first aggravating factor from a subjective perspective is the lack of respect you disclosed by your actions toward your subordinates. Your function as an instructor, your position as a section 2 i/c and your appointment as a Master Corporal put on you the responsibility to instruct, evaluate, lead and use authority over these candidates in an appropriate manner, which you failed to do so for a brief moment. Your extensive military experience and your personal skills should have pushed you to do better than that.
- ii. Secondly, you did not hesitate to abuse of your authority to sort out the issue, in a manner that you knew, was totally inappropriate. New candidates on a basic course are very vulnerable and they depend on you to help them understand what is correct or not to do. Expressing your anger and personal frustration about the situation, in the way you did, was not very helpful for anybody to understand the situation and how to correct it and you knew that.

[21] There are also mitigating factors that I have considered:

- a. First, there is your guilty plea. Through the facts presented to this court, the court must consider your guilty plea as a clear, genuine sign of remorse and that you are very sincere in your pursuit of staying a valid asset to the Canadian Forces and it also discloses the fact that you are taking full responsibility for what you did.
- b. Your age and your career potential as a member of the Canadian community; as you turned recently 34 years old, you have many years ahead to contribute positively to the Canadian Forces and the Canadian society.
- c. The fact that you had to face this court martial, which was announced and accessible to the public and which took place in the presence of some of your peers, has no doubt had a very significant deterrent effect on you and on them. It sends the message to others that the kind of conduct you displayed regarding the respect that must exist between instructors and recruits at CFLRS will not be tolerated in any way and will be dealt with accordingly.
- d. The fact that you do not have a conduct sheet or criminal record related to similar offences.
- e. Your outstanding career performance in the training and operational military environment. All performance evaluation reports, course report, personal development review, and the awarding of the Meritorious Service Medal for recognizing the highly professional manner you managed the events of 3 September 2006, clearly demonstrates your dedication to the

Canadian Forces and to all your comrades, including your brothers of arms. You are definitively serving your country before yourself and you can be proud of that.

- f. The contribution to the commission of the offences of the symptoms associated with your diagnosis of post-traumatic stress disorder (PTSD). Your prominent irritability, sleep difficulties, and hypervigilance made you more incline to act the way you did. It does not excuse what you did but it clearly did not help you to manage properly your intense ashamed and angry feelings you experienced at that time. It explains why you were on that day highly intolerant of mistakes and to incompetence. In addition, the physical pain you were experiencing, suicidal ideas and the fact that you were lonely didn't help either.
- g. The fact that you accepted medical help, that you are under medical and psychological treatment and cooperated fully since you seriously started it, demonstrates that things are improving to the extent that people trust you to teach recruits and that it is unlikely that you commit a similar offence.
- h. The fact that it is an isolated and out of character occurrence.

[22] What would be an appropriate punishment in the circumstances of this case? As mentioned by the prosecutor, usually it goes from a severe reprimand, to a reprimand and fine, or a fine only. A severe reprimand and a reprimand must be seen as a serious punishment in the military context. It is higher on the scale of punishment than a fine, whatever the amount of the fine. It reflects that there is some reason to have doubts about somebody's commitment at the time of the offence and it reflects consideration given to the seriousness of the offence committed, but it also means that there is good hope for rehabilitation.

[23] Here, I must say that considering the context, there is no reason to have doubts about your commitment at the time of the offence, regarding all the circumstances put before the court. Considering this, I do not see how appropriate it would be for the court to impose on you a severe reprimand or a reprimand.

[24] However, I am of the opinion that, in the circumstances of this case, in order to reflect the seriousness of the offence, the circumstances they occurred, the applicable sentencing objectives and principles, the aggravating and the mitigating factors mentioned above, a fine would meet the justice requirements in this case.

[25] Now, what would be the amount? I consider that the amount shall reflect the main principles related to the gravity of the offence and the responsibility and previous character of the offender. Then, it deserves something that can be removed from the conduct sheet. For this reason, I am of the opinion that a fine to the amount of 200\$ would be sufficient to reflect that.

FOR THESE REASONS, THE COURT:

[26] **FINDS** you guilty of the second, fourth and sixth charges on the charge sheet for an offence under section 95 of the *National Defence Act* for ill treating at three very distinctive moments on the same day, three different persons who by reason of rank were subordinate to the offender.

[27] **DIRECTS** that the proceedings on the first, third and fifth charges be stayed.

[28] **SENTENCES** you to a fine in the amount of \$200 payable immediately.

Counsel:

Major P. Doucet, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander B.G. Walden, Directorate of Defence Counsel Services
Counsel for Master Corporal D. Lewis