

Citation: *R. v. Corporal C. Gaffey*, 2008 CM 1020

Docket: 200824

**STANDING COURT MARTIAL
CANADA
ONTARIO
AREA SUPPORT UNIT LONDON**

Date: 21 August 2008

PRESIDING: COLONEL M. DUTIL, CHIEF MILITARY JUDGE

HER MAJESTY THE QUEEN

v.

**CORPORAL C. GAFFEY
(Offender)**

SENTENCE

(Rendered orally)

[1] Corporal Gaffey, having accepted and recorded a plea of guilty in respect of the second charge, the court finds you guilty of that charge and I enter a stay of proceedings in respect of the first charge.

[2] This is a case where the prosecution and defence make a joint recommendation on sentence, and this joint recommendation proposes a sentence composed of a reprimand and \$1,000 fine. Although the court is not bound by the joint recommendation made by counsel, it is generally accepted that this submission should not be departed from except, of course, where to accept it would be contrary to public interest and would bring the administration of justice into disrepute. I agree with counsel for the prosecution and defence that this is not one of those cases and have no difficulty in accepting this joint recommendation.

[3] Of course, in accepting the recommendation, I have considered the circumstances of the offence, which is clearly an offence under s. 118 of the *National Defence Act*; it is clearly an offence of contempt. In this case, the contempt took place before a summary trial by the use of threatening language towards a witness, although not directly, but referring to that person who was also the immediate supervisor of Corporal Gaffey. So I agree with counsel for the prosecution that, at least in this case,

the proposed sentence does constitute the minimum necessary intervention that is adequate in the circumstances.

[4] I have also considered the evidence provided to the court; mostly, the Personnel Evaluation Reports that were provided, and they cover the last three years of your career. They clearly indicate that in recent years you have had difficulty not only with your immediate supervisor, but with self-discipline and proper military attitude towards the CF organization, and your unit in particular. I have also considered the direct and indirect consequences that this sentence will have on you or is likely to have on you.

[5] As I have said, the circumstances of this case relate to the offence of contempt, and the facts are very simple. During the course of your summary trial, you became extremely irritated, angry, and upset at the witness, your immediate supervisor, and you used those words, "I need to get out of the room," and, "If I have to listen to anymore of his lies, I'm going to kill him." It appears that you were pronouncing those words, and you were addressing those words to your assisting officer and not directly to the witness, but as a result of the incident, the summary trial was interrupted and it was continued at a later time, where the witness had to testify through telephone. This was clearly disruptive to the summary trial, and it certainly illustrates, in my opinion, a profound disrespect not only for the witness—that's one thing—and it's clear from the evidence that there is a serious conflict between you two, between that witness and Corporal Gaffey, but it shows a profound disrespect to the institution; that is, of a service tribunal, and as a military police officer, you should know better.

[6] I agree with the prosecution that it is a proper case that requires general deterrence, but also I think it requires a sentence that denounces the conduct in the context of the offence of contempt before a service tribunal. When we look at the principles of sentencing and the objectives of sentencing, we always refer to them as punishment; denunciation of the conduct; a need to answer general and specific deterrence; separation of offenders, which is, of course, not applicable here; rehabilitation of offenders; and the proportionality to the gravity of the offence and the degree of responsibility of the offender; and, of course, the parity of sentences. So clearly here, this case calls for a sentence that will emphasize general deterrence and denunciation of such conduct. And I agree that this joint recommendation would fulfil those two principle objectives and factors.

Aggravating Factors

[7] In accepting the joint recommendation, I consider that the following factors aggravate the sentence:

First, the objective gravity of the offence. In this case, it is not the fact that the offence under s. 118 of the *National Defence Act* is punishable by imprisonment

for less than two years. The seriousness of the offence refers to the very nature of the behaviour in the particular context; that is, contempt, and contempt before a service tribunal. This is why it is a serious offence. Not because of the maximum punishment provided in the section, but by the very nature of that offence.

The second aggravating factor I take in the context of this case is the fact that as a police officer you have to respect the law and show respect for the institution. I understand those comments may have been spontaneous. It is still unbecoming of a police officer and the respect for the institution that is there to uphold the law.

With regard to your conduct sheet, I do not consider that as an aggravating factor for the reason that it is unrelated to the behaviour that is the subject of this court martial.

Mitigating Factors

[8] In mitigation:

I certainly retain your plea of guilty today, and I agree with the prosecution that it is a sign of remorse. If it is a shift in your own attitude towards the Canadian Forces, your chain of command, and your colleagues, I think it is a step in the right direction. So I consider that to be a critical mitigating factor in this context in order to accept the joint recommendation.

Second, I also consider the fact that the words uttered were very spontaneous and they were caused by your stress or by the stressful situation you were facing at the summary trial. And I certainly draw an inference that your behaviour had a direct link with the personal relationship that you had with your supervisor.

And finally, as a mitigating factor, I retain the fact that as a result of this conviction, which relates to an offence that is a designated offence under s. 196.26 of the *National Defence Act*, you may be fingerprinted, photographed, or subjected to any other measurement, process or operation having the object of identifying persons under the *Identification of Criminals Act*. And I don't have to add anything more to the fact that this, in the context of a police officer, is very significant. And, of course, we cannot forget that you will now have a criminal record for which you will require a pardon. So should there be consequences as a result of this conviction—there is evidence that your credentials have been suspended so far, and that the outcome of this trial as well as your other administrative problems and disciplinary problems will be

reviewed by the credential board as well as a career board. After all, your future in the Canadian Forces may be fragile.

Conclusion

[9] In a nutshell, this conviction relates to a serious problem with attitude. In your most recent PER, the additional reviewing officer said that you continue to show no regard for regulations and orders and that you have been disruptive not only to the detachment, but the Area Support Unit as well. I think it is time for you to reflect as to whether or not the Canadian Forces, as an institution, is the right place for you. It is not for everyone. But the institution and your colleagues and your chain of command, if they have to rely on you, they must do so with your acceptance to live by the rules and regulations and also respect them.

[10] So after having considered all those elements, I am satisfied that the joint submission does not bring the administration of justice into disrepute and I will not depart from it.

[11] I sentence you to a reprimand and a fine of \$1,000. Five hundred dollars payable immediately, and the second portion, or the second half of this fine, payable over the next five months at the rate of \$100 per month, starting 21 September 2008, to finish on 21 January 2009. Of course, if you are released from the Canadian Forces prior to the full payment of this fine, it will be payable immediately the day prior your release. You may be seated.

COLONEL M. DUTIL, C.M.J.

Counsel:

Major J.J. Samson, Regional Military Prosecutions Western Region
Counsel for Her Majesty the Queen

Lieutenant-Commander J.A. McMunagle, Directorate of Defence Counsel Services
Counsel for Corporal Gaffey