Citation: *R. v. Ex-Petty Officer 1st Class C.G. Carlson*, 2008 CM 1012

Docket: 200705

STANDING COURT MARTIAL
CANADA
CANADIAN FORCES BASE ESQUIMALT
BRITISH COLUMBIA

Date: 18 April 2008

PRESIDING: COLONEL MARIO DUTIL, CHIEF MILITARY JUDGE

HER MAJESTY THE QUEEN
v.
EX-PETTY OFFICER FIRST CLASS C.G. CARLSON
(Offender)

SENTENCE
(Rendered Orally)

Introduction

[1] Having accepted and recorded a plea of guilty in respect of the 1st charge for an offence under section 129 of the *National Defence Act*, an act to the prejudice of good order and discipline, the court finds you guilty of the charge. The particulars read:

> In that he, between 15 November 2005 and 21 January 2006, at or near Victoria, and elsewhere in British Columbia, knowing that on occasions M.S. S. Robert and L.S. J. Ennis were using cocaine, a Schedule I drug within the means of the *Controlled Drugs and Substances Act* did not bring this to the attention of the proper authority and further did not himself attempt to appropriately deal with their drug use and; on occasions during off duty days did himself use cocaine, a Schedule I drug within the meaning of the *Controlled Drugs and Substances Act* and did so to the knowledge of his subordinates named above.

[2] This is the fourth Standing Court Martial for members of HER MAJESTY'S CANADIAN SHIP SASKATOON for drug related incidents, which occurred in late 2005 and early 2006. On 28 February 2007, Master Seaman Murley

entered pleas of guilty to a charge of trafficking cannabis marihuana and a charge of conduct to the prejudice of good order and discipline for using a drug, also cannabis marihuana, without authority. The offender had given a small quantity of marihuana to someone she knew as a shipmate who was in fact an undercover police for the Canadian Forces National Investigation Service. Shortly prior to this, she had shared a marihuana cigarette with the undercover operator. In his reasons, Military Judge Commander Peter Lamont made the following remarks:

> [10] In the case of *Ordinary Seaman Ennis* I referred to the following quotes from Mr Justice Addy Speaking for the Court Martial Appeal Court in the case of *R. v. MacEachern*, (1985) 24 C.C.C. (3d) 439:
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> > "Because of the particularly important and perilous tasks which the military may at any time, on short notice, be called upon to perform, and because of the teamwork required in carrying out those tasks, which frequently involve the employment of highly technical and potentially dangerous instruments and weapons, there can be no doubt that the military authorities are fully justified in attaching very great importance to the total elimination of the presence of and the use of any drugs in all military establishments or formations and aboard all naval vessels or aircraft. Their concern and interest in seeing that no member of the forces uses or distributes drugs and in ultimately eliminating its use may be more pressing than that of civilian authorities."
>
> In my view, those statements are as true today as they were when they were first made in 1985. These considerations fully justify a sentence involving incarceration even for a first disciplinary offence in the interests of general deterrence.

[3] Master Seaman Murley was sentenced to imprisonment for a period of 15 days and to a fine in the amount of 500 dollars. This presiding judge suspended the carrying into effect of the punishment of imprisonment.

[4] On 13 April 2007, Ex-Master Seaman Robert entered pleas of guilty to one offence of trafficking in cocaine punishable under section 130 of the *National Defence Act* contrary to subsection 5(1) of the *Controlled Drugs and Substances Act* and to one offence under section 129 of the *National Defence Act* for using cocaine and marihuana contrary to the Canadian Forces Drug Policy. In *Robert*, the offender admitted to the military police on the day of her arrest that she had consumed cocaine and marihuana. With regard to the charge of trafficking, she had became aware on 15 January 2006 of an undercover operator's interest in cocaine when she witnessed that undercover operator asking Leading Seaman Ennis about cocaine and the undercover operator or agent said that she "did cocaine." She then invited the undercover operator to her apartment on the evening of 20 January, where she offered twice to give her some cocaine. Although she never asked the undercover operator for any money, Master Seaman Robert did accept the twenty-dollar bill handed to her after ingesting cocaine for a second time. The undercover operator did testify that the offender was clearly under the influence of alcohol and drugs at the time she accepted the money. The presiding judge, Military Judge Lieutenant-Colonel Perron, noted that the evidence did not reveal that she had been participating in the drug culture within HMCS SASKATOON. She was sentence to imprisonment for a period of 30 days and a fine in the amount of 500 dollars. The carrying into effect of the punishment of imprisonment

was also suspended by the presiding judge who took into account the fact that she had been released from the Canadian Forces under item 5*f*) prior to trial as a relevant factor when considering the principle of general deterrence. She had experienced a very difficult childhood, which had contributed to an addiction to drugs and later to alcohol. After her arrest, she had gone to the executive officer of HMCS SASKATOON and asked for help with her addiction. At the time of her Standing Court Martial, she had attended at a drug treatment facility and she had been sober since the completion of her treatment in March of 2006.

[5] On 10 August 2007, Military Judge Lieutenant-Colonel d'Auteuil presided at the Standing Court Martial of Ex-Leading Seaman Ennis. He had been charged with one offence of trafficking contrary to section 5(1) of the *Controlled Drugs and Substances Act* and with two offences of conduct to the prejudice of good order and discipline contrary to subsection 129(2) of the *National Defence Act* for using a drug contrary to article 20.04 of the Queen's Regulations and Orders for the Canadian Forces. The offender was found guilty solely of the offence punishable under section 129 of the *National Defence Act* for using a drug, which is cocaine, contrary to QR&O article 20.04. The presiding judge concluded that the sentence needed to emphasize the need for general deterrence. In *Ennis*, the court based its decision on the basis of the confession made by the accused on 23 January 2006 and the testimony of one witness. The offender had told the investigator the date, place, and the location where he and others had used cocaine. In that case, the nature of the substance used was clearly identified. The court concluded that the offender had personal knowledge of the applicable regulation and his conduct constituted a breach of the applicable regulation. The offender had made a clear admission that he used cocaine on 21 January 2006 at a hostel in Courtney, British Columbia, in contradiction of QR&O article 20.04. Ex-Leading Seaman Ennis was sentenced to a reprimand and a fine of 2000 dollars.

The facts

[6] The circumstances surrounding this case reveal that between 15 November 2005 and 21 January 2006, at or near Victoria, and elsewhere in British Colombia, Ex-Petty Officer 1st Class Carlson was aware that two subordinates on his ship, namely Master Seaman S. Robert and Leading Seaman J. Ennis were using cocaine on occasions. As the Coxswain of HMCS SASKATOON, he was aware of his obligation under QR&O article 5.01 to promote the welfare, efficiency and good discipline of his subordinates and to report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline. This included the Canadian Forces Drug Control Program, which is found in chapter 20 of the Queen's Regulations and Orders for the Canadian Forces. He further did not himself attempt to appropriately

deal with his subordinates drug use. In addition, Ex-Petty Officer 1st Class Carlson had on occasions during off duty days used himself cocaine and that to the knowledge of Master Seaman Robert and Leading Seaman Ennis. However, the investigation that led to the initial charges did not provide any evidence that the offender had or used cocaine or any other illicit drug on board HMCS SASKATOON. The investigation included an undercover operation where a police officer, a female police officer, had been inserted on board ship to work directly beside Ex-Petty Officer 1st Class Carlson as an administrative clerk. It's also important to note that due to his use of cocaine, Ex-Petty Officer 1st Class Carlson attended the Edgewood Residential Addictions Treatment Centre commencing on 8 February 2006. On 24 April 2006, he was served with a Record of Disciplinary Proceedings, which contained the initial charges against him. The charge before the court today differs from the initial set of charges. On 27 April 2006, Ex-Petty Officer 1st Class Carlson was served with a notice of intent to recommend his release by his commanding officer. His employment and pay contract was to run until January 2007 but was terminated early on 15 June 2006. Ex-Petty Officer 1st Class Carlson was released from the Canadian in May 2007 under Item 5(*f*) (*Unsuitable for Further Service*). This item of release applies to the release of an officer or non-commissioned member who, in the opinion of the release authority, either wholly or chiefly because of factors within his control, develops personal weakness or behaviour or has domestic or other personal problems that seriously impair his usefulness to or impose an excessive administrative burden on the Canadian Forces. It must be noted that where a service person is released under Item 3, 4 or 5, the notation "Honourably Released" appears.

[7] During the sentencing procedure, the court heard several witnesses, namely Chief Petty Officer 1st Class Paul David Helston, Commander Craig Baines, Lieutenant-Commander Jeffry White—Commanding Officer of HMCS SASKATOON at the time of the offence—and Chief Petty Officer 1st Class Leroy Hearns. Their evidence highly stressed the role and responsibilities of a coxswain on a warship and its pivotal position between the officers and non-commissioned members.

[8] The court has also heard the testimony of Chief Petty Officer 1st Class Robert John Cookson who provided a document that disclosed the number of summary trials in relation to offences dealing with marihuana and cocaine related offences since 2004, at least here within this region. Based on the information contained in this document, the court finds this evidence of little assistance. The court was not provided with any information as to the exact nature of the charges that were laid against the individuals named in it, the circumstances surrounding the commission of any of these offences and the particular aggravating and mitigating circumstances or factors applicable to these offenders including their previous records. The court is not in a position neither, on the basis of that information alone, to make any inference or conclude that illicit drug related activities are rampant in the Pacific Fleet or beyond control or within control. However, the evidence heard at trial indicates that the chain of

command has taken positive steps in the last two years or at least in the last years to educate in a various and serious ways, using multi-disciplinary resources, with illicit drug activities and the serious dangers and consequences that naturally flow from the use of illicit substances.

[9] The coxswain is the highest ranked non-commissioned member on board ship. He is one element of the command triad with the Commanding Officer and the Executive Officer. He is responsible for and represents all non-commissioned members. The coxswain shall ensure the welfare and the well-being of his subordinates. This responsibility applies also, to some extent, in regard of the junior officers as well. He is the fatherly figure. Operationally, he ensures that the ship is ready with the right personnel in place. The coxswain is also responsible for all aspects regarding dress, deportment and discipline and he is a key advisor to the commanding officer on these issues. On small ships like HMCS SASKATOON, the coxswain has also significant administrative duties and responsibilities.

[10] The coxswain has a special relation of trust with the commanding officer and the executive officer who rely heavily and rightfully on him by reason of his training, experience as well as his recognized outstanding qualities. He is the crucial link between command and the ship's crew and as such he must always protect and foster the trust vested in him by the chain of command but also that of each non-commissioned member in the unit regardless of their rank. As the person in charge of discipline, he has investigative and charge laying authority. In situations where morale and cohesion and esprit de corps are in issue, the coxswain plays a key role in restoring and maintaining these aspects to the highest level. The evidence shows that this aspect is extremely important on smaller ships because of the limited number of personnel.

[11] Only the most deserving and competent non-commissioned members can have the rare privilege to be appointed as a coxswain on one of Her Majesty's Canadian Ships regardless of the class of ship. This is analogue to the role of a Regimental Sergeant Major in the army or a Base Chief Warrant Officer in the air force. Coxswain candidates must be great leaders, high performers and show outstanding potential to even be considered to such position. These persons must always lead by example. They are models of integrity and honesty in one of the most critical position of trust.

[12] In determining sentence today, the court has considered the circumstances surrounding the commission of the offence, as well as the testimonies heard and the documentary evidence filed with the court during the sentencing hearing. The court has also considered the case law provided by counsel and their oral submissions. Finally, the court has considered any direct and indirect consequences that the finding and sentence will have on Ex-Petty Officer 1st Class Carlson. These elements have been weighed with the applicable sentencing principles and objectives, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code*, when

they are not incompatible with the sentencing regime provided under the *National Defence Act*.

[13] It has been long recognized that the purpose of a separate system of military justice is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency and morale of the military. It is also recognized that the military context may, in appropriate circumstances, justify and, at times, require a sentence that will promote military objectives. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances. When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances of the case as well as of the offender.

[14] In order to contribute to military discipline, the sentencing principles and objectives could be listed as:

> firstly, protection of the public, and this includes the Canadian Forces;
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> secondly, the punishment and the denunciation of the unlawful conduct;
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> thirdly, the deterrence, not only on the offender but also on others from committing similar offences;
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> fourthly, the separation of offenders from society, including from members of the Canadian Forces where necessary;
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> fifthly, the rehabilitation of offenders;
>
> sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;
>
> seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
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> eighthly, the offender should not be deprived of liberty if less restrictive punishment or combination of punishments may be appropriate in their circumstances;
>
> and finally, the court shall consider any relevant aggravating or mitigating circumstance relating to the offence or the offender.

[15] The court concludes that the sentence imposed in this case shall answer the need to protect the public and the Canadian Forces with punishments that will promote the maintenance of military discipline and the interests of military justice through denunciation and punishment of the impugned conduct as well as general deterrence. Given the circumstances of this case, where the events took place more than two years ago, and the fact that the offender has been released from the Canadian Forces for reasons that led to this court martial, the court considers that specific deterrence is not a primary objective. However, the court believes that the sentence should not impair the rehabilitation of Ex-Petty Officer 1st Class Carlson, which has been underway for a significant period of time in the civilian community.

[16] This case is a prime example of blatant disregard not only for basic military discipline and disrespect of the CF Drug Policy for the unauthorized used of drugs by a senior non-commissioned member but an absolute abdication by a senior non-commissioned officer—in the highest position within a unit—of his role and responsibilities for the maintenance of discipline in the unit as well as his failure to ensure the welfare and efficiency of his subordinates involved in illegal drugs. Ex-Petty Officer 1st Class Carlson effectively betrayed the trust vested in him by the Canadian Forces, the chain of command and every subordinate on board HMCS SASKATOON.

Aggravating factors

[17] In arriving at what the court considers to be a fair and appropriate sentence, the court has considered the following factors to aggravate the sentence:

> First, the objective gravity of the offence. Any person who contravenes section 129 of the *National Defence Act* is liable to dismissal with disgrace from Her Majesty's service. This is a serious offence.
>
> Second, the particular context of this case as revealed by the evidence. There is not doubt, in the court's view, that the seriousness of the misconduct places this case in the higher spectrum for these offences. This behaviour showed not only a profound disrespect for the rule of law, it seriously attacked the core foundation of military discipline and military ethics required of senior leaders. By not interfering with Master Seaman Robert and Leading Seaman Ennis drug abuse with cocaine, you totally failed in the performance of your duties to the chain of command but also your duty to them of promoting their welfare knowing that there were engaged in dangerous and harmful illicit activities. In addition, your own consumption of cocaine contrary to the Canadian Forces Drug Program to the knowledge two of your subordinates inevitably and

irremediably undermined your authority and that of the ship's chain of command in matters of military discipline, integrity and leadership.

Thirdly, the rank and the status of the offender at the time of the offence. As the coxswain on the HMCS SASKATOON, Ex-Petty Officer 1st Class Carlson was vested with the highest level of responsibility and trust for a senior non-commissioned member on a ship. The impugned conduct of the offender violated the most basic ethical attributes that are required and rightfully expected of our senior leaders: honesty, loyalty, integrity, leadership and courage.

Mitigating factors

[18] However, the court considers the following factors to mitigate the sentence:

First, your plea of guilty to the charge before the court. I consider this plea of guilty as a sign of genuine remorse and acceptance of responsibility for your actions, especially in light of the public apology that you have made yesterday after your counsel's submissions. And I must say that this is extremely important in this case with regard to the sentence that the court is about to impose.

Second, the fact that you had for many years been an extremely solid performer. You joined the Canadian Forces in 1991 as a reservist and have been, until the time of your release in 2007, a very active and positive asset to the Canadian Forces. Your record indicates that, although employed as a reservist, you have been mostly employed as a Class B reservist, and this explains why I am using the term that you have been very active. A member of the Reserve Force is on Class B Reserve service when the member is on full-time service and: serves in a temporary position on the instructional or administrative staff of a school or other training establishment conducting training for the Reserve Force, for example; or proceeds on such training attachment or such training course of such duration as may be prescribed by the Chief of the Defence Staff; or is on duties of a temporary nature approved by the Chief of the Defence Staff, or by an authority designated by him, when it is not practical to employ members of the Regular Force on those duties. In your last evaluation report as a member of the Canadian Forces, the Commander MOG 4, Captain(N) D. Sing made the following remarks, which captured the essence of your military career in the Reserve Force:

> "Until recently, Petty Officer 1st Class Carlson had always performed in an exemplary fashion and clearly demonstrated above average potential for advancement in rank and responsibility. Based on previous performance, he was selected Chief Petty Officer 2nd Class on 1 Jan 06."

The fact that the events leading to this trial took place over two years ago is also a mitigating factor and for the following reasons. Not only have you been released from the Canadian Forces since almost one year as a result of your misconduct and leadership failures, your case has been highly publicized in both the printed and electronic media from coast to coast based on the charges laid at the time and the charges that were preferred by the prosecution including a charge of trafficking in cocaine contrary to the *Controlled Drugs and Substances Act*, which is not reflective of the outcome of these proceedings. I agree with your counsel that this had the effect to severely stigmatize you in the context of a drug trafficker, where there was no admissible evidence to that effect presented at trial. However, this is not to say that your actions, as we know them today, did not deserve public attention and media scrutiny considering the overall seriousness of the offence.

The court considers also mitigating the fact that you have secured employment in New Brunswick since April 2007 and that your employer is very satisfied with your performance. In this short period of time, you managed to be the recipient of corporate awards, namely: Top Guide and Gold Circle of Experience Award. You have also been accepted at the New Brunswick Community College to commence the Industrial Control Technology COOP Program for the Fall 2008 term.

And finally, as a mitigating factor, the court recognizes the fact that you have entered and completed a drug treatment therapy shortly after the events that led to this trial in February 2006 and that your drug problems, and I have no evidence to say the contrary. It seems to be behind you for now.

[19] The prosecution suggests that the minimal punishment should consist of imprisonment for a period of 45 to 90 days in order to maintain discipline and serve the interests of military justice. According to the prosecution, this punishment would promote the need for denunciation of such conduct, the objective and subjective seriousness of the offence in the context of leadership failures, the nature of the substance involved and the specific position of trust that you occupied at the time, that is coxswain of HMCS SASKATOON. Your counsel recommends that the sentence

should not include incarceration, which is the punishment of last resort, in the particular circumstances of this case.

[20] In *R. v. Gladue,* (1999) 133 C.C.C. (3d) 385, the Supreme Court of Canada stated that imprisonment should be the penal sanction of last resort. This principle was reiterated by the Court Martial Appeal Court in *R. v. Baptista*, neutral citation 1, delivered on 27 January 2006 in the context of military justice. It is abundantly clear that imprisonment should be used only where no other sanction, or combination of sanctions is appropriate to the offence and to the offender.

[21] In order to craft a fair and appropriate sentence, the court has closely examined at the other punishments and combination of punishments under section 139 of the *National Defence Act* to ensure the protection of the public by a sentence that would promote the need for punishment, denunciation and general deterrence. The court believes that a proper and fit sentence does not necessarily require the use of the punishment of last resort. Sentencing is not an exercise of revenge nor is it a panacea to resolve broad disciplinary problems. It is the outcome of a delicate balancing exercise after carefully considering the principles and objectives of sentencing and the particular circumstances of the offence and of the offender. Finally, it must always be the minimum necessary intervention that is adequate in the particular circumstances.

[22] As stated by the prosecution, "this case is about the principles of trust and leadership, responsibility and mentorship and their violations." I believe that is also about the striking failure by a senior non-commissioned member, who was in a key position as the coxswain of a small warship, in the fulfilment of his duties and responsibilities as well as his betrayal of the trust vested in him by the Canadian Forces, his chain of command and his subordinates. Although, the use of cocaine was the vehicle of the failure, it goes beyond the dimension of a single contravention of the Canadian Forces drug policy for using unauthorized drugs, possession or traffic of illicit substances. It is also not a case of trafficking in cocaine by a coxswain onboard ship or ashore on or off-duty. I agree with counsel from both sides when they state that this case is somewhat unique. Its focus is clearly on the violation of the role and the responsibilities of a senior service member put in a key position of trust that is coxswain on a ship or its equivalent in the army or the air force environment. It highlights how the objective seriousness of an offence must be increased by reason of the rank and status of an individual who commits it. An appropriate punishment shall be proportionate to the gravity of the offence and the degree of responsibility of the offender. In this case, it is particularly blameworthy.

[23] Stand up, Mr Carlson. I will not impose the punishment of last resort because imprisonment would not capture and reflect the overall dimension of your misconduct in the context of what is expected of our leaders in the Canadian Forces. It is also not necessary to impose imprisonment because there is a combination of

punishments that are sufficient to impose a fair and just sentence. However, it will send a clear message to every person in authority that such conduct will not be tolerated and that the standard of conduct expected of them is commensurate to the trust vested in them by the institution, their subordinates and, I would say, all Canadians. Serving in the Canadian Forces in a leadership role or position is a privilege. One has to earn it. It is not a right. Like any privilege, it can be limited, suspended or revoked.

[24] The sentence that the court is about to impose will have, amongst its direct consequences, two very important effects, Firstly, your item of release from the Canadian forces will no longer mention "Honourably Release" but "Misconduct". Secondly, it will also indicate that persons who seriously betray the trust vested in them by knowingly tolerating illicit drugs abuse such as cocaine by their subordinates and using similar substances to the knowledge of the said subordinates no longer deserve the privilege of leading our fine service persons and will lose such privilege.

25] For these reasons, you are sentenced to dismissal from Her Majesty's Service, reduction in rank to the rank of leading seaman and a fine in the amount of 2000 dollars. The payment of the fine will be made by certified cheque or money order to the Receiver General of Canada at the address that will be specified to you by counsel for the prosecution. So the payments will be made for the next six months, starting next month, with the same modality of payments; that is certified cheques or money orders to the Receiver General of Canada and those payments, of course, will be equal.

COLONEL M. DUTIL, C.M.J.

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