COURT MARTIAL

Citation: *R v Major*, 2012 CM 3002

Date: 20120213
Docket: 201140

Standing Court Martial

Canadian Forces Base Cold Lake
Cold Lake, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal C.M.G. Major, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Corporal Major, having accepted and recorded a plea of guilty in respect of the first and only charge on the charge sheet, the court now finds you guilty of this charge. It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the sentence.

[2] 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.

[3] 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 re-

spect of the Code of Service Discipline and the maintenance of efficiency and the morale among the Canadian Forces, (*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.

[4] Here, in this case, the prosecutor is suggesting that the court sentence you to detention for a period of 14 days. Your own defence counsel told the court that incarceration was inappropriate in the circumstances of this case and he suggested to the court to impose a reprimand or a fine in the amount of $500.

[5] 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.

[6] 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.

[7] 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.

[8] 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. It must be said that general deterrence means that the sentence imposed should deter not simply the offender from reoffending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct.

[9] On the night of 4 October 2009, the military police ended up at the residence of Corporal Major further to an anonymous phone call and some research. They learned from his common-law wife that he drank a lot and she felt that she could no longer control Corporal Major. The military police determined that Corporal Major would be placed under arrest for breach of the peace to ensure Ms Lavoie's safety. The military police advised Corporal Major that he was under arrest for a breach of the peace. While in his residence, he resisted physically the police officers and they had to physically control him. Once under control, Corporal Major twisted around and struck one of the military police in the leg with his knee. Corporal Major attempted to jump off the front steps of his residence, but was prevented from doing so. He started to scream loudly. As the military police wrestled Corporal Major into the rear passenger compartment of the patrol vehicle, he slammed his head down onto the vehicle. He was finally taken to the 4 Wing Military Police Detachment, where he was detained for a day.

[10] 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 offence. The offence you were charged with was laid in accordance with paragraph 130 of the *National Defence Act* for resisting arrest contrary to paragraph 129(a) of the *Criminal Code of Canada*, which is punishable by imprisonment for a term not exceeding two years or to less punishment.

b. Secondly, the subjective seriousness of the offence; that for the court covers three aspects:

i. You demonstrated a total lack of respect for those who have the responsibility to apply the law and provide security to our community. Once you were told that you would be arrested, you did not hesitate to resist physically, to strike in the leg a peace officer performing his duty, and to scream.

ii. Your experience and your ethic principles for which you committed yourself as a military member of the Canadian Forces, such as to obey and support lawful authority should have come first and dictated your behaviour. To the contrary, you became aggressive and disrespectful which was unexpected from somebody like you.

iii. The fact that you were drunk must be considered also as an aggravating factor because you put yourself in that situation. You decided to drink alcohol to the point where your behaviour became dangerous for others and, as I understand it, nobody forced you to drink so much.

[11] There are also mitigating factors that I consider:

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; being 29 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 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. The fact that you spent one day in detention can be considered as a deterrent factor that has discouraged you to adopt again the same bad attitude;

f. The fact that this incident acted as a wake-up call for you and pushed you to get some help to get control over your addiction for drugs and al-

cohol, as on your temper. It has led you to be recently diagnosed with major depressive disorder for which you are taking now proper medication that has improved your mood and sleep habits. The court wants also to highlight the fact that since you took those steps no other reported incident has occurred at home or at work, which clearly demonstrates that what you did for yourself has been meaningful.

g. The delay in handling this matter The court does not want to blame anybody in this case, but the quicker a serious disciplinary matter is dealt with the more relevant and effective the punishment is with respect to objectives considered by the court and the effect on the morale and cohesion of the unit's members. The time lapse since the incident occurred, which is 28 months, is one of the factors making it less relevant to give consideration to a more severe punishment with some deterrent effect.

[12] Concerning the fact for this court to impose a sentence of incarceration to Corporal Major, it has been well established by the Supreme Court of Canada decision in *Gladue*, [1999] 1 SCR 688, at paragraphs 38 and 40 that incarceration should be used as a sanction of last resort. The Supreme Court of Canada specified that incarceration under the form of imprisonment is adequate only when any other sanction or combination of sanctions is not appropriate for the offence and the offender. This court is of the opinion that those principles are relevant in a military justice context, taking in account the main differences between the regimes for punishments imposed to a civilian tribunal sitting in criminal matters and the one set up in the *National Defence Act* for a service tribunal. This approach was confirmed by the Court Martial Appeal Court in *Baptista* (2006 CMAC 1 at paragraphs 5 and 6), where the court also said that incarceration should be imposed as a last resort.

[13] Here, in this case, considering the nature of the offence, which is a criminal offence *per se*, the circumstances it was committed, the applicable sentencing principles, the aggravating and mitigating factors mentioned above, I conclude that there is other sanctions or combination of sanctions other than incarceration that would appear as an appropriate punishment in this case.

[14] Despite the seriousness of what you did on that sad day of 4 October 2009, the passage of time has clearly demonstrated that it was an out-of-character incident, and because you addressed right away the source of your problem that led you to adopt an inappropriate behaviour on that day, incarceration does not appear to the court as appropriate in the very specific circumstances of this case. It is clear for the court that you clearly understood that something wrong was going on and you took the necessary steps to find it, which you did. However, in the circumstances of this case, I have come to the conclusion that in order to reflect the seriousness of the offence, the circumstances it occurred, the applicable sentencing principles, the aggravating and the mitigating factors mentioned above and the fact that a sentence should be similar to sentences imposed in similar circumstances such as the decision in *Crawford*, 2008 CM 4003, a

combination of a reprimand and a fine would appear to the court as an appropriate punishment in this case.

[15] The court reiterates that 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. In addition, this punishment will remain on your conduct sheet unless you get a pardon for the criminal record you are getting today. The reality is that your conviction will carry out a consequence that is often overlooked, which is that you will now have a criminal record, and it is not insignificant.

FOR THESE REASONS, THE COURT:

[16] **FINDS** you guilty of the first charge and only charge on the charge sheet for an offence under section 130 of the *National Defence Act* for resisting arrest contrary to paragraph 129(a) of the *Criminal Code*.

[17] **SENTENCES** you to a reprimand and a fine in the amount of $500. The fine shall be paid in monthly instalments of $100 per month commencing on the 1st day of March, 2012, and continuing for the following four months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable the day prior to your release.

Counsel:

Lieutenant-Commander S. Torani, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major D. Hodson, Directorate of Defence Counsel Services
Captain J.A. Peck, Deputy Judge Advocate Kingston
Counsel for Corporal C.M.G. Major