COURT MARTIAL

Citation: *R v Morgan*, 2012 CM 3003

Date: 20120215
Docket: 201157

Standing Court Martial

Canadian Forces Base Wainwright
Denwood, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Ex-Private G.D. Morgan, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Ex-Private Morgan, 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. Considering that the second charge was withdrawn by the prosecution at the beginning of this trial, then the court has no other charge to deal with. 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 respect 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 and the offender's defence counsel made a joint submission on sentence to be imposed by the court. They recommended that this court sentence you to a fine of $500 in order to meet the justice requirements. Although this court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute, or be contrary to the public interest (*R* v *Taylor* 2008 CMAC 1, at paragraph 21).

[5] 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.

[9] Here, the court is dealing with the military offence of possessing psilocybin in 2010 and as mentioned by Judge Dutil in his decision of *R v Humphrey*, 2011 CM 1009:

> The Court Martial Appeal Court and numerous courts martial have constantly held that the use and the trafficking of drugs is more serious in the military community because of the very nature of the duties and responsibilities of every Canadian Forces member in ensuring the safety and the defence of our country and of our fellow Canadian citizens. The military community cannot tolerate breaches to its strict and well-known policy prohibiting the use of illicit drugs. However, these broad statements must be applied in the context of individual cases and the appropriate sentencing principles and objectives.

That is paragraph 4 of the decision and I clearly adopt the words of Colonel Dutil on this matter.

[10] Essentially, further to information provided by a confidential informant, the military police investigators arrested, on 8 April 2010, Private Morgan and another Canadian Forces member in a car parked outside Building 626 on Canadian Forces Base Wainwright. Further to a search of the vehicle, psilocybin, most commonly known as "mushrooms" and some other substances were found in the car. Private Morgan was arrested and detained for a day and further to his interview by the police investigator, he took full responsibility for what he called the "mushrooms". Private Morgan was very cooperative during that interview.

[11] Now, 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 section 130 of the *National Defence Act* for possessing a drug contrary to subsection 4(1) of the *Controlled Drugs and Substances Act*. This type of offence is punishable by imprisonment for a term not exceeding three years.

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

i. First, there is the lack of integrity and honesty you disclosed by your actions. You had a complete disrespect of the zero tolerance policy regarding drug use by members of the Canadian Forces. You knew about the policy and the conduct you adopted, especially in the presence of another member, showed a completely unacceptable behaviour on that very serious matter.

ii. Second was the fact that the offence was committed on a Canadian Forces establishment.

iii. Third is basically the presence of other CF members, because you admitted that you possessed the substance, but clearly this was done in the presence of another member. So as a matter of example, it appears as being a bad example concerning the policy, and for that I consider this as an aggravating factor.

[12] But also there is some mitigating factors that I have to 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 society.

b. Also, your cooperative attitude since the time of your arrest and during the investigation must also be considered as a serious mitigating factor. Basically, once arrested, you recognized that you didn't respect the policy and you admitted facts concerning the possession of the drug right away and I must consider that as a mitigating factor.

c. There is also your age and your career potential in the community. Being 23 years old, you have many years ahead to contribute positively to the Canadian society and I understand that you already started to do so by finding another employment in 2010 and it looks like you are doing well, so I encourage you to continue in this way.

d. There is the fact that you had to face this court martial. Despite the fact that this offence occurred some time ago, you had to come here and be present here at this court that was announced and accessible to the public and which took place in the presence of some of your peers. It 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 drugs will not be tolerated in any way and will be dealt with accordingly.

e. There is also the fact that you don't have a conduct sheet or criminal record for similar matters.

f. I also understand from the circumstances put to me that it is an isolated incident and since then, nothing has been reported to me for letting me think that you had similar conduct or you were involved again in any kind of possession or trafficking with drugs.

g. There is the fact that you respected conditions for your release after you were arrested. I think it is a very important matter. The custody review officer imposed on you the fact to stay on the base, basically. This is my understanding. And you respected that, so it is something in your favour and I have to consider that.

h. Also the fact that you spent a night in custody. Sometimes further to arrest people are released right away; you spent some time in custody. You were detained and it is something that the court has to consider

i. Finally, there is what was qualified by the prosecutor as "the passage of time," which we call, legally speaking, the delay to proceed with 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 is one of the factors making it less relevant to give consideration to a more severe punishment with some deterrent effect.

[13] If the court accepts the joint submission made by counsel, I have to remind you that in addition, the punishment will remain on your conduct sheet unless you get a pardon because you are getting a criminal record 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.

[14] In consequence, the court will accept the joint submission made by counsel to sentence you to a fine in the amount of $500, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[15] **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 possessing a drug contrary to paragraph 4(1) of the *Controlled Drugs and Substances Act*.

[16] **SENTENCES** you to a fine in the amount of $500.

Counsel:

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

Major S. Collins, Directorate of Defence Counsel Services
Counsel for ex-Private G.D. Morgan