

Citation: *R. v. Chief Warrant Officer W.J. Groves*, 2007 CM 1027

Docket: S200735

**STANDING COURT MARTIAL
CANADA
ONTARIO
THUNDER BAY ARMOURIES**

Date: 28 November 2007

PRESIDING: COLONEL M. DUTIL, C.M.J.

HER MAJESTY THE QUEEN

v.

**CHIEF WARRANT OFFICER W.J. GROVES
(Offender)**

SENTENCE

(Rendered orally)

[1] Chief Warrant Officer Groves, having accepted and recorded a plea of guilty in respect of the first charge, this court finds you guilty of that charge. This is a case where the prosecution and counsel for the defence have made a joint submission on sentence. They have recommended that the court sentence you to a reprimand and a fine in the amount of \$200.

[2] Although this court is not bound by this joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute. This is not the case here. 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 in the military context, it might be appropriate in certain circumstances, and be justified, at times, to dictate sentences that are more severe than if the same offence would be committed in a purely civilian context in order to promote military objectives. In this particular case here, it is not a civilian offence, it is purely a military offence. That being said, any punishment imposed by any tribunal, be it military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] In determining sentence today, the court has considered the totality of the circumstances surrounding the commission of the offence that was presented during the sentencing procedure, as well as the extensive documentary evidence filed with the court and that was summarized in some fashion by defence counsel. The court has also considered, for the purposes of sentencing, the submissions or representations that were made by counsel. I have also considered any direct or indirect consequences that the finding and sentence will have on you.

[4] 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. And it is generally 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 to the offender.

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

Firstly, the protection of the public, and that includes the Canadian Forces;

Secondly, the punishment and the denunciation of the unlawful conduct;

Thirdly, the deterrence of the offender and other persons from committing similar offences;

Fourthly, the separation of offenders from society, including from members of the Canadian Forces, where necessary;

Fifthly, the rehabilitation of the offender;

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;

Eighthly, an offender should not be deprived of liberty if less restrictive punishment or combination of punishments may be more appropriate in the circumstances; and,

Finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

[6] The court believes that a proper and fit sentence in this case should emphasize the denunciation of the conduct and general deterrence. I am not concerned with specific deterrence, because the circumstances provided to the court clearly indicate, certainly with your almost immediate apology and concern for Private Crawford, that this is not a matter that will be repeated by yourself. That is why I am saying that the court wishes to emphasize denunciation of the conduct and general deterrence. This is a case, as well, that relates to basic military discipline that is expected of service members who occupy positions of trust and authority in any unit.

[7] It might be useful to review again some of the circumstances that were provided to the court:

- a) You were and still are, at this time, the Regimental Sergeant Major (RSM) of 18 Field Ambulance. You were the one who set and did enforce the standards within the unit for good order and discipline. As the RSM, you were also the highest ranked non-commissioned member in that unit, and as it was stated, you must lead by example. Your actions, your deportment, were to be to the highest standard.
- b) On 7 December 2004, at the Christmas party for that unit, which was a tradition within the unit, you gave your annual speech concerning alcohol in the holiday period, and you reminded your troops that they were to drink responsibly, and, also, you spoke about those people who were under age, with regard to drinking alcohol.
- c) Later in that party you saw Private Crawford leaving the orderly room with three to four beers in his combat pockets. Rather than enquiring into the matter, you told him something to the effect that "If you are going to drink those, you are going to drink them with me." And then you know what happened: Private Crawford got onto a table in the orderly room and you had him lie flat on his back, and then you began to pour beer in his mouth. It started with one, and one was consumed. The second beer, Private Crawford had some difficulty, and, of course, you did not realize that he did, but he quickly sat up. This matter ended when Captain Penny entered the orderly room when you were asked to stop.
- d) Private Crawford became sick, vomited, and, basically, that was the end of the story. You were reprimanded for that. You apologized at the earliest possible opportunity to Private

Crawford and to all those members in the orderly room at the time, and you were truly concerned with Private Crawford's well-being at the time. Less than a month after, you apologized to the members of the unit for your inappropriate actions. The incident was also reflected on your personnel evaluation report with regards to that lack of judgement. In a nutshell, those are the circumstances surrounding the offence.

[8] In arriving at what the court considers to be a fair and appropriate sentence, and to determine whether or not this joint submission is appropriate in the circumstances, I have considered the following factors to aggravate the sentence:

- a) First, the objective gravity of the offence. A person found guilty of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act* is liable to dismissal with disgrace from Her Majesty's Service. Although some people do not realize it, it is a very serious offence.
- b) Second, of course, is the particular context of the case as was revealed by the Statement of Circumstances that I have just briefly read in some detail.
- c) The third aggravating factor is your position as the unit RSM for 18 Field Ambulance. This is a position that requires the highest level of self-discipline. There is no more important position with regard to the discipline of all members of the unit. Everyone looks at the RSM. The prosecution referred to the RSM as the model for soldiers, and I would add even for officers, especially more junior officers who rely so much on the RSM for guidance and their well-being. By your actions, of course, you have undermined your authority, your position, but I think you also undermined the authority of the chain of command within that unit. So I consider that to be aggravating.

[9] Now, of course, we have to consider the mitigating factors.

- a) You have acknowledged full responsibility for your actions by pleading guilty before the court at the very first opportunity. But more importantly, as described in the Statement of Circumstances, you apologized almost immediately to Private Crawford and to members of the unit. You made a public apology to the unit as well. You made an apology to, at least, those members in the orderly room at the time, but later on, you

apologized to the unit. This plea of guilty has to be put in that proper context. It is not a plea where the person, because of overwhelming evidence, comes in the morning of the trial and pleads guilty. Looking at the pattern of conduct here, you have accepted responsibility for this incident at the earliest stage possible.

- b) The second mitigating factor is the unit action that has been taken with regard to your conduct for the reporting period ending in March '05. This is not a matter that was left pending for two years, waiting for disciplinary disposition. There was unit action taken, although administrative action taken, against you, at least with regard to commenting on this incident in your personnel evaluation report.
- c) The third mitigating factor—and they are not in order of priority. I consider them to be all equal in the circumstances—is that the documentary evidence filed before the court shows, without a shadow of a doubt, and clearly indicates that you are an outstanding non-commissioned member, an outstanding sergeant major, an outstanding medical technician with an unblemished career, at least before that incident. So your conduct—at least that's the court's view on this—is something that is clearly an error in judgement, and which is out of character for a person such as yourself. I consider the documentary evidence to speak highly in mitigation for that purpose.
- d) Another factor, that was not commented upon by either the prosecutor or defence, that I consider to be mitigating is the mere fact that you had to go through the disciplinary process. I am totally convinced that a unit regimental sergeant major who has to face a court martial in a room that is full of comrades, soldiers, subordinates, and members of the public, has the most general deterrent effect that one could look for, and I consider that to be a mitigating factor. And, this plays significantly in accepting this joint recommendation made by counsel, which, in the context, is totally appropriate in the circumstances.

[10] For all these reasons, the court accepts the joint submission made by counsel, which is adequate in the circumstances to achieve the need for discipline and serve the protection of the public and would not bring the administration of justice into disrepute. I am convinced that either myself or any other military judge will not see you in a military court again. And, of course, as you know now, you will have a conduct

sheet for which you will require a pardon under the *Criminal Records Act*, and that is also something that is significant.

[11] Therefore, this court sentences you to a reprimand and a fine in the amount of \$200. March out Chief Warrant Officer Groves. The proceedings of this court martial in regard to Chief Warrant Officer Groves are terminated.

COLONEL M. DUTIL, C.M.J.

Counsel :

Captain D. Kirk, Regional Military Prosecutor Central Region
Counsel for Her Majesty The Queen
Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Chief Warrant Officer W.J. Groves