



COURT MARTIAL

Citation: *R. v. Cheston*, 2011 CM 1001

Date: 20110119

Docket: 201049

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Ex-Corporal Simon Anthony Cheston, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Ex-Corporal Cheston was charged with four counts of trafficking in a substance punishable under s. 130 of the *National Defence Act* contrary to s. 5(1) of the *Controlled Drugs and Substances Act*. The charges alleged that the offences occurred between 5 and 9 February 2010 at or near Victoria, British Columbia. The first, second, and third charges alleged that ex-Corporal Cheston did traffic in a substance included in Schedule II, to wit cannabis marihuana, whereas the fourth charge referred to the traffic of cocaine, a substance included in Schedule I of the *Act*. Ex-Corporal Cheston entered pleas of guilty to all charges on 17 January 2011. The court accepted and recorded the pleas accordingly.

[2] It is now incumbent upon me to determine what shall be an appropriate, fair and just sentence. Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that ex-Corporal Cheston be sentenced to imprisonment for a period of nine months and that the court make an order prohibiting the offender from possessing weapons pursuant to s. 147.1 of the *National Defence Act* as well as an order

authorizing the taking of bodily samples for the purpose of forensic DNA analysis under s. 196.14 (3) of the *Act*. Although this court is not bound by this joint submission, it is generally accepted that a joint submission ought to be rejected only if it is contrary to the public interest and the sentence would bring the administration of justice into disrepute.

[3] In the context of sentencing an offender under the Code of Service Discipline for drug trafficking, a court martial should guide itself with the appropriate sentencing purposes, principles and objectives, including those enunciated in ss. 718.1 and 718.2 of the *Criminal Code* and s. 10 of the *Controlled Drugs and Substances Act*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives: the protection of the public and it includes the interest of the Canadian Forces; the denunciation of the unlawful conduct; the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and, the reformation and rehabilitation of the offender.

[4] The sentence must also take into consideration the following principles. The sentence must be commensurate with the gravity of the offence, the previous character of the offender and his/her degree of responsibility; the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. In other words, punishments in the form of incarceration should be used as a last resort. Finally, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, the court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline.

[5] The facts surrounding the commission of the offences reveal that ex-Corporal Cheston was a member of the Canadian Forces, Regular Force, serving at Canadian Forces Base Esquimalt, British Columbia, as an administration clerk in the orderly room at the base hospital. The drug trafficking occurred when ex-Corporal Cheston sold the indicated drugs to an undercover operator (UCO). The UCO was a member of the Canadian Forces, part of a drug investigation supervised by the Canadian Forces National Investigative Service (CFNIS) and holding herself out to be employed as a civilian contractor as part of a work experience programme employed in the same orderly room as ex-Corporal Cheston. The UCO and ex-Corporal Cheston met on 4 February 2010 for the first time. All of the drug transactions took place in the parking lot of the Harbour Tours Hotel in Victoria, British Columbia. The circumstances provided to the court are particularly precise. They reveal the following events:

Events of 5 February 2010

- a. (1150 hours) – The UCO and Corporal Cheston headed to lunch together. While in Corporal Cheston's vehicle, he told her that he was in rehab for drugs and alcohol. The UCO asked Corporal Cheston if he could hook her up with a couple of grams for the weekend. Corporal Cheston agreed to get some "green" for the UCO. Corporal Cheston said he was heavy into dealing when he was posted to CFB Borden and when he left the drug trafficking dropped by 75 per cent. Corporal Cheston said he dealt cocaine as well in the past. When they arrived at Subway restaurant on Esquimalt Road he began talking to a male outside Subway, after the male departed Corporal Cheston said the male was a drug buddy of his and he was getting ready to do a deal then. When they arrived back at the base hospital parking lot, Corporal Cheston provided the UCO with his cellphone number and that she could call him later that day after work and he would hook her up with a couple of grams.
- b. (1540 hours) – The UCO departed the orderly room at the base hospital and while walking by Corporal Cheston, gestured calling him by putting her hand to her ear and face. Corporal Cheston made eye and nodded his head.
- c. (1746 hours) – The UCO called Corporal Cheston on his cellphone. Corporal Cheston said he was busy but could meet later and hook her up with 3-4 grams. Corporal Cheston stated that he was waiting for his buddy to call but could meet her at the hotel to do the buy.
- d. (1912 hours) – The UCO called Corporal Cheston back. He said he would meet the UCO at the hotel parking lot (Harbour Tours) in 20 minutes to hook her up with the three grams of green (marihuana). The UCO asked Corporal Cheston the price which he said was \$30. The UCO gave Corporal Cheston the directions to get to the hotel. Corporal Cheston asked for the UCO's cell number which she provided.
- e. (1952 hours) – Corporal Cheston arrived at parking lot outside hotel. The UCO got in the passenger seat with the vehicle door opened a crack. Corporal Cheston opened the center console between the driver's seat and passenger's seat and grabbed the see-through plastic baggie and handed it to the UCO. The baggie contained the three grams of marihuana. The UCO gave \$40 to Corporal Cheston. The UCO asked Corporal Cheston if he could hook her up again on the weekend or at another time. He agreed. The UCO exited Corporal Cheston's vehicle.
- f. (1958 hours) – The UCO gave the baggie containing three grams of marihuana to the evidence custodian to log in as evidence.

Events of 8 February 2010:

- g. (0750 hours) – Corporal Cheston arrived at base hospital parking lot. The UCO approached Corporal Cheston when he exited his vehicle. The UCO asked Corporal Cheston if he could hook her up with more "green". Corporal Cheston said no problem. Corporal Cheston said to call him after work around 1630 hours.
- h. (1445 hours) – Corporal Cheston approached the UCO at her desk and said he spoke with his buddy on the phone and Corporal Cheston would be able to hook her up after work. Corporal Cheston said to give him (Corporal Cheston) a call around 1630 hours and they would arrange a meeting.
- i. (1655 hours) – The UCO called Corporal Cheston on his cellphone. Corporal Cheston asked the UCO how much she was looking for and she replied how much could she get. Corporal Cheston said whatever she wanted. The UCO asked for 1/4 oz, Corporal Cheston said no problem. She asked how much and he said to hang on a second and asked someone in the background. Corporal Cheston then told the UCO \$60. Corporal Cheston said he had to wait approximately five minutes and would call her on her cell when he left his buddy's place. Corporal Cheston agreed to meet at the hotel parking lot again to complete the deal.
- j. (1719 hours) – Corporal Cheston arrived at Harbour Tours Hotel parking lot. The UCO exited her vehicle and got into Corporal Cheston's vehicle. Corporal Cheston reached into his pants pocket and pulled out the marijuana which was in a see-through plastic baggie rolled up. He gave the UCO the baggie containing 1/4 oz of marijuana. The UCO gave \$60 to Corporal Cheston. She asked Corporal Cheston if he could hook her up with some "E" (slang for ecstasy) or cocaine. He said that the "E" is junk like bath water and it was worth it but he could get her hooked up with some "blow" (cocaine). The UCO said she was going to visit some friends in Vancouver this weekend and would let Corporal Cheston know how much she wanted later in the week. The UCO exited the vehicle.
- k. (1730 hours) – The UCO gave the plastic baggie containing marijuana to the evidence custodian.

Events of 9 February 2010:

- l. (1530 hours) – The UCO spoke with Corporal Cheston and asked him if they were good for later this week? Corporal Cheston said: "shit yes but sooner rather than later because shit is hot right now and moving fast".

Corporal Cheston told the UCO to give him a call if she was "bored and shit" so they could hang out.

- m. (1814 hours) – The UCO called Corporal Cheston on his cellphone. She asked Corporal Cheston if they could hook up later and Corporal Cheston said no problem. She asked Corporal Cheston for 1/2 oz of blow. He said it wouldn't be a problem to get this for her. She asked Corporal Cheston how much for 1/2 oz of blow. Corporal Cheston replied buck ten (\$110). The UCO said to Corporal Cheston that blow is going cheap out here which he stated "not too bad". Corporal Cheston agreed to call the UCO when he was on his way to town.
- n. (1936 hours) – Corporal. Cheston called the UCO on her cellphone, he told her that he was on his way to hook up to do the buy.
- o. (1942 hours) – Corporal Cheston arrived at Harbour Tours Hotel outside parking lot where the UCO exited her vehicle and got into the passenger's side of his vehicle. When the UCO got into Corporal Cheston's vehicle he took two plastic baggies containing marijuana out of the center console of his vehicle. The UCO said to Corporal Cheston that she was looking for coke not weed. Corporal Cheston said "shit" I thought you were looking for green. The UCO said that was why she asked how come blow was so cheap out here. At 1944 hours, Corporal Cheston called his buddy to see if he could get 1/2 oz of coke. Corporal Cheston kept telling the UCO it would be expensive here in the city but if she had given him time he could have got it in Ladysmith which was one and a half hours away. Corporal Cheston spoke with his buddy regarding to get 1/2 oz of coke. His buddy said he would have to call him back.
- p. (1946 hours) – Corporal Cheston received a call from his buddy on his cellphone. The man told Corporal Cheston he could not get 1/2 oz of coke right now. Corporal Cheston ended the conversation. The UCO told Corporal Cheston to call his buddy back and see how much he could get tonight because the UCO was planning on calling in sick on Friday and heading to Vancouver for the weekend.
- q. (1949 hours) – Corporal Cheston called his buddy back on his cellphone. Corporal Cheston was able to get six grams of coke for \$450. The UCO told Corporal Cheston she would take that.
- r. (1952 hours) – As the UCO exited Corporal Cheston's vehicle he told her he had to go to his buddy's place to get the coke which was close to the hospital and about 10-15 minutes away from the hotel. Corporal Cheston said he would call the UCO on his way back to the hotel. Corporal Cheston drove out of the parking lot.

- s. (2018 hours) – Corporal Cheston drove back into the hotel parking lot. The UCO exited her vehicle and got into Corporal Cheston's vehicle. When she got in, Corporal Cheston proceeded to reach into his pants pocket and pull out six small bags of coke (six grams, one gram per bag) and placed the six bags into the UCO's hand. She then asked Corporal Cheston if he wanted to get rid of the weed as well and Corporal Cheston responded "yes". Corporal Cheston retrieved the two plastic baggies containing a total of 1/2 oz of marihuana from the center console and placed them in her hand. The UCO counted out the money, and gave Corporal Cheston \$590 in cash. Before exiting the vehicle, Corporal Cheston told her to let him know in advance if she was looking for coke and he would be able to make her a better deal. At 2020 hours, before exiting the vehicle Corporal Cheston said that his buddy wanted to know how well Corporal Cheston knew the UCO and Corporal Cheston told his buddy they were good friends. The UCO later gave the cocaine and the marihuana to the evidence custodian.

[6] Early the next day, the UCO spoke with Corporal Cheston and asked if he wanted to go for lunch that day so they could talk about Corporal Cheston hooking her up again. Corporal Cheston said yes. At noon, they both departed the base hospital walking towards the parking lot. As they entered the car they were approached by CFNIS members and both were arrested. On 11 February 2010 at 0908 hours, Corporal Cheston was released on conditions by the Custody Review Officer.

[7] Ex-Corporal Cheston was released from the Canadian Forces, effective 7 July 2010, under Item 2(a) (Unsatisfactory Service) of the table to article 15.01 (*Release of Officers and Non-Commissioned Members*) of the Queen's Regulations and orders for the Canadian Forces for the actions that led to the charges before this court martial¹.

[8] During the sentencing hearing, relevant evidence was filed before the court. Ex-Corporal Cheston's mother and stepfather testified. Their testimonies were forthright, candid and highly relevant. Mrs Schulz indicated that her son lived with her until the completion of elementary school. Ex-Corporal Cheston then moved with his father in Montreal. During those years, she had regular contacts with her son and he would visit her during holidays. After her son joined the Canadian Forces, she maintained similar contacts with him. Mrs Schulz married her current spouse, Reverend Schulz, in 2006. She learned of her son's drug addiction when ex-Corporal Cheston enrolled in a treatment for substance abuse at the Edgewood Treatment Center in June 2009. At that time, she felt that he had embraced the rehabilitation programme and that he had a good chance of success, although her experience revealed that addictions are a life struggle. Mrs Schulz has been involved for several years with a non-profit organization dealing with addictions. She learned of the charges of trafficking in February 2010. Her son moved with them this past December 2010 on their mutual understanding that one of the very important steps for ex-Corporal Cheston in starting a new life was to separate himself from the people and the environment that contributed to his personal and crimi-

¹ See Exhibits 12 and 13.

nal problems. When he moved with the family near the city of Vernon, British Columbia, they imposed a strict set of rules banning the use of alcohol and drugs. To their knowledge, ex-Corporal Cheston has willingly complied with the house rules. They both highlighted his positive attitude and his sincere efforts to turn his life around. Ex-Corporal Cheston has displayed genuine efforts to help them around the house during important renovations. Reverend Schulz, ex-corporal Cheston's stepfather, has a long experience in the A.A. programme and has completed a major in Counselling Addiction as part of his baccalaureate in Theology. Although not qualified as an expert witness by the court, his testimony significantly assisted the court in determining sentence. Ex-Corporal Cheston and him have had several conversations since 2010. Reverend Schulz believes that his stepson is positively receptive and that there is hope for him after serving his sentence, as long as ex-Corporal Cheston endorses the rehabilitation programme, continues to be pro-active, and finds his place in life. However, Reverend Schulz's knowledge and experience tells him that it will be a challenge for his stepson, based on previous discussions he had with him in the past. Ex-Corporal Cheston enjoys a full support from his family. However, they fully understand that his criminal conduct must bear important consequences. There is no doubt that they will be there for him after the serving of his punishment.

[9] The documentary evidence provides the following additional relevant information:

- a. Ex-Corporal Cheston is currently 28 years old. He enrolled in May 2002. At the time of his release in July 2010, he had held the rank of corporal since May 2006. Ex-Corporal Cheston is single and has no dependant. He is a High School graduate².
- b. In a letter dated 12 January 2011³, Mr K. Michaelis, Mental Health Addiction Counsellor, described his personal knowledge of ex-Corporal Cheston. In summary, ex-Corporal Cheston completed a residential treatment program at Edgewood on June 2009 for a period of 53 days. He has had an extensive history of alcohol and illicit drug use. In May 2010, he confessed to his addiction counsellor that he was a drug addict. He was requested to disclose that information to his mother. Based on medical advice, bookings for another residential treatment were made accordingly, but they were cancelled at the request of the chain of command on the basis that the treatment plan would have to be delayed and revisited in the future. In light of their last session together on 31 May 2010, Mr Michaelis believes that "Simon is unable to arrest his addiction behaviour without medical assistance and certainly does not recognize the extent of his illness".
- c. From April 2009 until the end of March 2010, ex-Corporal Cheston's performance and attitude was described as positive by his superiors. His

² See Exhibits 3 and 4.

³ See Exhibit 10.

potential to progress in rank was normal. From May 2010 until his release from the Canadian Forces in early July 2010, his performance was assessed as very good. His commanding officer believed that ex-Corporal Cheston had a good appreciation of the impact of his conduct upon himself and the image of the Canadian Forces as well as being truly remorseful for his actions.⁴

- d. In light of a letter filed on behalf of Mr Joshua Shortt, who has known ex-Corporal Cheston for a few years and currently employed as a labour foreman with Thompsons Brothers (Constr) Ltd located in Spruce Grove, Alberta, it appears that the company would be willing to offer ex-corporal Cheston a labourer position after serving a sentence of incarceration as long as he complies with a the company's strict drug policy⁵.
- e. Finally, a document filed with the consent of counsel for the defence illustrates the number of summary trials held at CFB Esquimalt from 2007 to 2010 for offences under s. 129 of the *National Defence Act* for the violation of the Canadian Forces Drug Policy prohibiting the unauthorized used of drugs, particularly for the use of marihuana and cocaine⁶. This document reveals that 13 summary trials were held in 2007; 5 summary trials were held in 2008; 3 summary trials were held in 2009; and, 12 summary trials were held in 2010. This document was admitted for a very limited purpose; that is, the presence of the unauthorized use of these substances at CFB Esquimalt. The court cannot make any inference as to whether the number of convictions at summary trials represents the tip of the iceberg or evidence to the contrary with regard to the consumption of cocaine and marihuana in this region. Absent of any additional substantial and/or expert evidence, the court cannot draw any other conclusion on such document.

[10] 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 CF member in ensuring the safety and the defence of our country and of our fellow Canadian citizen. The military community cannot tolerate breaches to its strict and well-known policy prohibiting the use of illicit drugs. In *Lee v. The Queen*⁷, O'Reilly J.A., for the court, reiterated the applicable principles of sentencing in a military context for offences of drug trafficking at para. 26-27:

[26] It is clear that trafficking in drugs within the military is a serious offence and that convictions usually result in carceral sentences. The main concern in determining the appropriate sentence is to deter others. As the Court stated in *Dominie v. The Queen*, 2002

⁴ See Exhibits 8 and 9.

⁵ See Exhibit 11.

⁶ See Exhibit 7.

⁷ 2010 CMAC 5, 22 April 2010.

CMAC 8, "general deterrence requires that the military know that they will be imprisoned if they deal in crack cocaine on military bases" (para. 5).

[27] The same concern was expressed in a case where the accused was charged with a single offence of trafficking in a small amount of cocaine (*Taylor v. The Queen*, 2008 CMAC 1). The Court upheld the Military Judge's sentence of 40 days' imprisonment. The Military Judge justified the sentence by stating that the "use of drugs and the trafficking of drugs are a direct threat to the operational efficiency of our forces and a threat to the security of our personnel and equipment" (para. 27).

[11] There should be no issue that the sentence of an offender for trafficking in drugs must emphasize the principles of denunciation of the conduct and the punishment of the offender as well as general and individual deterrence. It must also allow for the rehabilitation of the offender, including treatment in appropriate circumstances. The fact that a military offender has been administratively released from the Canadian Forces prior to his court martial for drug trafficking does not diminish the importance to protect the public at large in the maintenance of a just, peaceful, and safe society. The concurrent jurisdiction of the military justice system to deal with these offences cannot be exercised in isolation.

[12] The aggravating factors in this case can be summarized as follows:

- a. Any person convicted of an offence included in Schedule I, such as cocaine, or Schedule II, such as cannabis marihuana is liable to imprisonment for life. The maximum punishment for this offence in the context of a substance included in Schedule II that does not exceed three kilograms is reduced to five years less a day. Trafficking in cocaine is vigorously condemned because of the harm it causes to individuals and to Canadian society.
- b. The circumstances surrounding the drug transactions and the quantities involved. Despite your persistent problems with your drug addiction, you did not hesitate to promptly assist a person introduced to you the day before as a civilian co-worker, when she asked you whether you could get her three grams of marihuana. Not only did you admit being in rehab for drugs and alcohol, you even portrayed yourself as being highly involved in drug trafficking when you were posted to Borden, including cocaine. Three days later, you agreed immediately to get her more marihuana that same day. You then sold her 1/4 oz of the said substance. When the UCO asked if you could get ecstasy or cocaine, you replied that you could obtain cocaine. The following day, the UCO asked you if you could obtain 1/2 oz of blow (cocaine). You replied that it would not be a problem. Although you had mistaken her request and obtained marihuana instead of cocaine, you managed to get her six grams of cocaine through your contact, and that within the hour of the misunderstanding. Once the UCO asked you if you wanted to get rid of the 1/2 oz of marihuana, you handed it to her. Over a period of five days, you delivered every drug asked by the UCO and you received the sum of \$690. The

pattern of transactions clearly revealed that you were well aware of the local drug market, including suppliers, price, and availability of the illicit substances. There is no evidence before the court that you sold the drugs to satisfy your own addiction. However, it is clear that you did it for profit, although there is no evidence that you were part of an ongoing criminal organization.

- c. The evidence indicates that the use of illicit substances such as cocaine and marihuana has been an ongoing reality in recent years at Canadian Forces Base Esquimalt.

I will now examine the mitigating factors in this case:

- a. You have pleaded guilty to all charges before the court. Through your counsel, you have also announced your intention to plead guilty at the earliest opportunity. The court considers this complete admission of guilt as a sincere expression of remorse and the full acceptance of responsibility for your misconduct;
- b. You have no previous disciplinary or prior criminal record;
- c. You are 28 years old and you have recently taken positive steps to deal with your addiction problems in choosing to reside with your mother and stepfather who are fully supportive. Not only are they willing to assist you in your rehabilitation and reinsertion in society, the court believes that their knowledge and experience will be extremely valuable to you if you make every effort to turn your life around; and
- d. You were released from the Canadian Forces in July 2010 for the events that led to the charges before the court and you remain mostly unemployed.

[13] The court agrees with counsel that this case fits within the range of sentences imposed in similar matters, such as the courts martial of *Dominie*, *Ennis*, and *Ellis*. It is true that the quantities of cocaine involved are substantially more significant here, but the offender's personal mitigating circumstances are sufficient to conclude that the proposed punishment of imprisonment for a period of nine months is not so off the mark that its adoption by this court martial would be contrary to the public interest or bring the administration of justice into disrepute.

[14] Counsel for the prosecution and defence agree that this court should also make an order prohibiting the offender from possessing weapons pursuant to s.147.1 of the *National Defence Act*. It must be noted that the parallel provision in s. 109(1)(c) of the *Criminal Code*, which deals with weapons prohibition order, makes it mandatory in similar circumstances. In addition, a first offender would be subject to a lifetime prohibition in relation to prohibited firearms, restricted firearms, prohibited weapons, prohib-

ited devices and prohibited ammunition; and a similar offender would also be subject to a 10-year prohibition with respect to other firearms, restricted weapons, cross-bows, ammunition, and explosive substances.

[15] In the circumstances, the court is satisfied that it desirable in the interests of the safety of ex-corporal Cheston and other persons to make an order under s. 147.1 of the *National Defence Act*. The court cannot find any substantial reason to impose different terms and duration in the order that those that would have been mandatorily imposed on ex-corporal Cheston if he had been tried in a court of criminal jurisdiction.

[16] Counsel equally agree that the court should make an order authorizing the taking of bodily samples for the purpose of forensic DNA analysis under s. 196.14 (3) of the *Act*. The fact that both counsel consider that the court should exercise its discretion in making the order, is not determinative. The court can only make such an order in the circumstances, if it is satisfied that it is in the best interests of the administration of military justice to do so after taking into consideration the nature of the offence and the circumstances surrounding its commission, any previous convictions by a service tribunal or civil court, any previous finding of not responsible on account of mental disorder for a designated offence, and the impact such an order would have on the person's privacy and security of the person, and shall give reasons for the decision.

[17] S. 196.14(3) of the *National Defence Act* does not impose any burden on the prosecution or defence. The prosecution seeking the order must put forward sufficient information to raise the issue. The court must then be satisfied after weighing and balancing all the relevant considerations that the order should be made. Drug trafficking is a very serious offence, which has a profound detrimental effect on society, and particularly cocaine. The circumstances surrounding the commission of the offences committed by ex-corporal Cheston have been thoroughly described by the court and they are very serious. The offender showed no hesitation in acquiescing to the demand of a UCO introduced to him as a fellow civilian co-worker one day earlier to obtain her marihuana. Within a period of 5 days, four drug transactions took place, including the sale of a significant quantity of cocaine. The facts surrounding the commission of the offences reveal that the offender was very cognisant of the drug milieu in the area and he had no hesitation to obtain whatever the UCO would ask. This is a not a case of social trafficking. Ex-Corporal Cheston trafficked in marihuana and cocaine for profit. Considering an offender's diminished expectation of privacy after a finding of guilty and subject to a custodial sentence, the minimal intrusion into the security of the person in the ordinary case and the important interests served by the DNA data bank, it will usually be in the best interests of the administration of military justice for the judge to make the order. In this case, ex-Corporal Cheston will serve a significant period of imprisonment. The fact that ex-Corporal Cheston has no previous disciplinary or criminal record is not sufficient to clearly and substantially outweigh the public interest in favor of his best privacy and security interests. Therefore, the court will make the order to provide such samples as are reasonably required for the purpose of forensic DNA analysis.

FOR THESE REASONS, THE COURT:

[18] **FINDS** you, ex-Corporal Cheston, guilty of the first, second, third, and fourth charges punishable under s. 130 of the *National Defence Act*; that is to say, trafficking, contrary to s. 5(1) of the *Controlled Drugs and Substances Act*.

[19] **SENTENCES** you to imprisonment for a period of nine months.

[20] **PROHIBITS** you from possessing, any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition and explosive substance for a period of 10 years and 9 months ending on 19 October 2021 under s. 147.1 of the *National Defence Act*.

[21] **PROHIBITS** you from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life under s. 147.1 of the *National Defence Act*.

[22] **AUTHORIZES** the taking from you of the number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis under s. 196.14 of the *National Defence Act*.

Counsel:

Major D. Curliss, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major E. Thomas, Directorate Defence Counsel Services
Counsel for ex-Cpl S.A. Cheston