



COURT MARTIAL

Citation: *R v Balint*, 2011 CM 1012

Date: 20111107

Docket: 201152

Standing Court Martial

Royal Military College Kingston
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Officer Cadet A. Balint, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] On 4 November 2011 Officer Cadet Balint pleaded guilty to an offence of absence without leave under s. 90 of the *National Defence Act* that had been laid in the alternative. The court accepted and recorded the plea of guilty and directed that the proceedings with regard to other charge be stayed. The particulars alleged that she, on 5 July 2011, at or near Canadian Forces Base Gagetown, New Brunswick, without authority was absent from her quarters at "Tent City" and remained absent until 0600 hours on 6 July 2011.

[2] The court shall now impose a sentence that is appropriate, fair, and just. Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that Officer Cadet Balint be sentenced to a minor punishment, that is confinement to barracks for a period of 12 days. 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 if the sentence would bring the administration of justice into disrepute. However, counsel must provide sufficient and rele-

vant information with regard to the commission of the offence and with regard to the offender.

[3] The circumstances surrounding the commission of the offence reveal that on 5 July 2011, Officer Cadet Balint was a candidate on the Basic Military Officer Qualification – Land, later referred as to (BMOQ-L) course conducted by the Infantry School, part of the Combat Training Centre, at Canadian Forces Base Gagetown, New Brunswick. That day, she attended sick parade and was examined by a medical officer. Following that examination, Officer Cadet Balint was issued a "CF H Svcs Gp Employment Limitations for Return to Work Worksheet," later referred as "The RTW Worksheet." The RTW Worksheet indicated that Officer Cadet Balint was excused from duty for one day, among other restrictions.

[4] After her medical assessment on the morning of 5 July 2011, Officer Cadet Balint presented her RTW Worksheet to her Acting Course Second-in-Command, Sergeant N.S. Patry. Upon seeing that Officer Cadet Balint was excused from duty for one day, Sergeant Patry told Officer Cadet Balint to return to her quarters at Tent City situated within the base. He told her that for the remainder of the day and until her return to the BMOQ-L course on 6 July 2011, she was only permitted to leave her quarters at Tent City for the purposes of using the washroom facilities at Building L-38, and for using the dining facilities at Building H-33. Sergeant Patry communicated these instructions in such a way that he believed Officer Cadet Balint to have clearly understood them.

[5] Later on 5 July 2011, Officer Cadet Balint voluntarily left her quarters at Tent City and was observed around 1945 hours at the Tim Horton's coffee shop at Canadian Forces Base Gagetown with a friend. Officer Cadet Balint received a text message on the evening of 5 July 2011 from a course-mate asking where she was. Officer Cadet Balint replied by text message to her course-mate stating that she intended to return to Tent City the next morning, on 6 July 2011, at 0600 hours. Officer Cadet Balint spent the night of 5 July 2011 at her friend's residence, which was not located within Tent City. Officer Cadet Balint returned to Tent City on 6 July 2011, at 0600 hours.

[6] Officer Cadet Balint had not been authorized by any superior, nor by any law, practice or custom, to be absent from Tent City to attend at Tim Horton's or at her friend's quarters between the time of her departure from Tent City on 5 July 2011 and 0600 hours on 6 July 2011.

[7] In addition to the usual administrative documents entered by the prosecution at the sentencing hearing, an agreed statement of facts and three course reports were originally filed in evidence, including the course report for the BMOQ-L course from which she was removed as a result of her absence without leave. There was very little evidence filed in court over and above those documents. In a nutshell, she enrolled in the Canadian Forces as a member of the Reserve Force in January 2007. She initially served with the Royal Highland Fusiliers of Canada, where she completed the following courses: Basic Military Qualification and Basic Military Qualification - Land. She at-

tained the rank of private. She reclassified as an Officer Cadet under the Reserve Entry Training Plan at the Royal Military College of Canada in July 2008. During the summer of 2009, she completed her Basic Military Officer Qualification training, and during the summer of 2010, she attended Second Language training. She was attending the Basic Military Officer Qualification – Land training at Canadian Forces Base Gagetown during the summer of 2011 when the events that gave rise to the present charges took place.

[8] She was charged by a member of the Infantry School staff at Canadian Forces Base Gagetown, on 18 July 2011, who was a person authorized to lay a charge. On 19 July 2011, she elected to be tried by court martial. The charges were referred to the Director of Military Prosecutions by letter dated 17 August 2011, and preferred on 28 September 2011.

[9] Her course report from her Basic Military Officer Qualification – Land course indicates that she displayed a positive attitude throughout the course both in leadership and follower roles. She displayed an above average level of knowledge and confidence during the course. However, she was deemed to be a training failure as a result of her inappropriate conduct on 5 and 6 July 2011 and was not awarded credit for the course. She was administratively removed from the course on 8 July 2011. She was recommended for recourse on a future serial as long as her conduct would remain acceptable. Officer Cadet Balint does not have a conduct sheet.

[10] It must be mentioned that the fundamental purpose of sentencing at court martial is to contribute to maintenance of discipline and the respect of the law by imposing punishments that meet one or more of the following objectives: the protection of the public and it includes 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.

[11] 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, because 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 to 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.

[12] At the sentencing hearing held on 4 November 2011, both counsel had made their submissions in support of their joint recommendation on sentence. During these submissions, the court made it clear that it was not satisfied with the information pro-

vided to properly assess whether the joint recommendation was in the public interest and would not bring the administration of justice into disrepute. In addition, the court concluded that it did not possess sufficient elements to appreciate how the proposed punishment would achieve the sentencing goals and objectives advanced by counsel, particularly deterrence, denunciation of the conduct, and rehabilitation. Although the case law relied upon by the prosecution were of some assistance, these precedents were not considered sufficiently adequate to allow the court to conduct a fair analysis of the key elements in the sentencing process that must be individualized, specifically when rehabilitation is a predominant objective. Moreover, none of the said case law dealt with the imposition of a minor punishment. Therefore, the court asked counsel to provide additional evidence in support of their submissions to assist the court to have a better knowledge and appreciation of Officer Cadet Balint's recent performance and conduct, both academic and military. In other words, the court needed a stronger evidentiary basis to ultimately be satisfied that the proposed sentence was fit, fair and just.

[13] Paragraph 104.13(5) (Minor Punishments) of the *Queen's Regulations and Orders for the Canadian Forces* provides:

(5) The minor punishments that a court martial may impose are subject to the conditions prescribed in the table to article 108.24 (*Powers of Punishment of a Commanding Officer*).

This provision was adopted in 1998 to enable a military judge presiding at a court martial to impose a minor punishment, which was previously available only to an officer presiding at a summary trial. Although this amendment extended the range of punishments available to sentence an offender found guilty of an offence at court martial, it must be emphasized that minor punishments are mostly appropriate and designed for the chain of command to deal with very minor offences in promoting and fostering the rehabilitation of military offenders that are considered otherwise productive members of their unit. Notes B and C to Article 104.13 provide clear guidance to commanding officers for the effective use of minor punishments. They provide:

(B) The goal of minor punishments is to correct the conduct of service members who have committed service offence of a minor nature while allowing those members to remain productive members of the unit.

(C) The role of rules for the administration of minor punishments is vital. The rules are the vehicle through which commanding officers may

(i) tailor, to meet unit requirements, a programme of extra work and drill to improve the military efficiency and discipline of unit members convicted of minor service offences; and

(ii) define the geographic limits within which a member undergoing the punishment of leave or confinement to ship or barracks must remain and the routine applicable to members serving those punishments.

[14] It is not surprising that minor punishments are rarely imposed at courts martial. These punishments were originally created to assist commanding officers to deal with offences of a minor nature committed by members under their own command. As commanding officers, they enjoy, either personally or through one or several of their subordinates, a first hand and comprehensive knowledge of a particular offender, especially as to his or her past and actual performance, strength and weaknesses, potential, financial, family situation, and all of the military and personal attributes constantly evaluated in a military environment. That said knowledge of a particular offender is of the outmost importance for any service tribunal before determining an appropriate sentence for a person found guilty of an offence of a very minor nature, particularly when rehabilitation is one of the key objectives.

[15] Counsel must appreciate that a judge presiding at a court martial does not possess that intimate knowledge of an offender specific attributes that are understandably evident to the immediate chain of command. Minor punishments are specifically designed to address the specific disciplinary shortcomings and personal circumstances of a military offender. The adequacy of minor punishments is intertwined with the personal knowledge of a specific military offender by his or her own commanding officer. In absence of this particular relationship that exists between a commanding officer and a particular offender, it is the duty of counsel to provide this information that is so critical when imposing any minor punishment at court martial. There is no better example then the infliction of a minor punishment to demonstrate that sentencing is an individualized process. In those rare cases where counsel recommend a minor punishment, they must provide the court with sufficient information of the previously mentioned information with respect to the nature, the purpose, and objectives of minor punishments. This applies whether or not counsel make a joint submission on sentence.

[16] This is the rationale supporting the court's request that it be provided with additional evidence at the sentencing hearing held on 4 November 2011. The court is grateful to counsel for their acceptance to reopen their case on sentence and call *viva voce* evidence. However, this request was not for the benefit of the presiding judge, but it was necessary to allow the court to ascertain whether the proposed sentence was consistent with the proper administration of military justice, including the interests of the offender; namely, Officer Cadet Balint.

[17] Further to the court request, the prosecution called two witnesses; namely, Captain Anthony Robb and Warrant Officer Christopher Desjardins. Counsel for the defence called Officer Cadet Scott Boyd. Counsel also filed, on consent, the relevant instructions governing the implementation of minor punishments at the Royal Military College of Canada in Kingston and a document that displayed her academic performance since September 2011.

[18] Captain Robb is an experienced officer and graduate of the Royal Military College. After serving twice in Afghanistan in recent years, he is now serving here at the College as a Squadron Commander since September 2011. He is responsible for 77 ca-

dets and has 21 cadets under his supervision, including Officer Cadet Balint. Captain Robb has a good knowledge of the offender. He testified that he acquired his knowledge through the reading of her personal file and during his interviews and discussions with her. He informed the court that Officer Cadet Balint has had some issues and deficiencies in the past, particularly with timings and dress as well as not being at the right place at the right time. Captain Robb further testified to the consequences of her failure on the BMOQ-L course last summer. He stated that although the ultimate consequences were unknown at this stage, the potential consequences were significant if she was to pursue training in her current occupation because the timings of a future serial of the BMOQ-L are unknown despite the fact that she was recommend for a re-course. Captain Robb stated that her promotion from Second Lieutenant to Lieutenant could be ultimately delayed significantly. He further testified that he has seen significant progress in Officer Cadet Balint's performance in the past months. She is now the strongest section commander and has expressed interest in further education. Officer Cadet Balint has also improved significantly her academic performance during that period. Captain Robb believes that Officer Cadet Balint has a good potential to become an effective officer in the Canadian Forces. He also believes that she lacks maturity at this stage of her career, but he promptly pointed that her recent performance is so positive that he is confident that she will be sufficiently mature in May 2012 and will successfully graduate.

[19] Warrant Officer Desjardins testified that he has served as a member of the *Princess Patricia's Canadian Light Infantry* Regiment throughout his military career and he is now a drill instructor at the Royal Military College since this past September. He testified that he is involved in the mentorship of minor punishments at the college and added that, based on his past experience, the imposition of minor punishments tend to improve deficiencies related to dress and deportment.

[20] Officer Cadet Boyd, a fourth year cadet, testified that he is currently the Cadet Flight Leader in 1 Squadron at the Royal Military College, whose duties are related to the military component of the training and physical fitness of cadets within his squadron. He is in charge of 25 cadets who are undergoing training between their second to fourth year. He has known Officer Cadet Balint since her first year at the College. Officer Cadet Boyd stated that she has joined 1 Squadron last year and that she is now a section commander within his Flight. Officer Cadet Balint is responsible for 8 to 9 cadets. Officer Cadet Boyd testified that Officer Cadet Balint is the most reliable section commander under his command since this past September. He corroborated the information provided by Captain Robb that she has improved her academic performance as well and that she sits well above the rest of the squadron in that area.

[21] The aggravating factors in this case are:

- a. The specific circumstances surrounding the commission of the offence reveal that the impugned conduct showed a blatant disregard to basic military discipline for no valid reason or purpose. Officer Cadet Balint's decision to absent herself without leave was purely selfish. She wanted

to spend time with a personal friend despite the clear directives given to her by an instructor; and

- b. The fact that Officer Cadet Balint has shown deficiencies in the past in relation to the compliance with instructions concerning the respect of set timings to attend at specific places and the standard of dress.

However, the sentence should be reduced to account for the following mitigating circumstances:

- a. The plea of guilty of Officer Cadet Balint at the earliest opportunity is very significant. It demonstrates that she accepts full responsibility for her misconduct;
- b. The fact that she has no conduct sheet or criminal record;
- c. The serious consequences of her withdrawal on her BMOQ-L course further to her absence without leave; and
- d. Her recent military and academic performance since the commission of the offence and particularly since September 2011.

[22] Further to the additional evidence and further submissions made by counsel, the court agrees that this case fits within the range of sentences imposed in similar matters and 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. Moreover, the sentence proposed is genuinely crafted to fit the offence and the particular circumstances of the offender. It will promote the objectives of denunciation, specific deterrence, and rehabilitation sought by counsel.

FOR THESE REASONS, THE COURT:

[23] **FINDS** Officer Cadet Balint guilty of the second charge under s. 90 of the *National Defence Act*, that is to say, Absence without Leave.

[24] **SENTENCES** Officer Cadet Balint to the minor punishment of Confinement to Barracks for a period of 12 days.

Counsel:

Major P. Rawal, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major S. Collins, Directorate of Defence Counsel Services
Counsel for Officer Cadet A. Balint