



COURT MARTIAL

Citation: R v *Thompson*, 2013 CM 3033

Date: 20131126

Docket: 201319

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Able Seaman R.T. Thompson, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Able Seaman Thompson, 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.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the sentence.

[3] 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 and 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.

[4] 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 (see *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.

[5] 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 detention for a period of 20 days 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 (see *R v Taylor* 2008 CMAC 1 at paragraph 21).

[6] 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.

[7] 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.

[8] When imposing sentences a military court must also take into consideration the following principles:

- (a) the sentence must be proportionate to the gravity of the offence;
- (b) the sentence must be proportionate to the responsibility and previous character of the offender;
- (c) the 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 well 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.

[9] I came to the conclusion that in the circumstances of this case, sentencing should place the focus on the objectives of specific and general deterrence.

[10] Here the court is dealing with a service offence of theft which relies on some ethic principles; such as, honesty and responsibility.

[11] On the evening of 13 May 2011, Able Seaman Thompson went to a bar in Boston while his ship, HMCS VILLE DE QUEBEC, was ashore. On that evening he had some drinks, he danced with a couple of people including Ms Norris and Ms Bertolino. During the evening while he approached those two people Ms Bertolino threw his hat into the crowd. In reaction Able Seaman Thompson threw her purse and he left. Ms Bertolino reported this incident as a theft made by Able Seaman Thompson and when he came back to the bar Able Seaman Thompson was arrested.

[12] The main consequence from this incident is that Ms Bertolino was first unable to access her apartment for the night and also she didn't recover the purse and the contents of her purse. Able Seaman Thompson was officially arrested and charged by Boston police

[13] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors.

[14] The court considers as aggravating:

- (a) first, 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 theft, contrary to section 334 of the *Criminal Code*. This type of offence is punishable by imprisonment for a term not exceeding two years or to less punishment;

- (b) secondly, the subjective seriousness of the offence and it covers two aspects for the court:
 - i.. first, the context of the commission of the offence. You were in a foreign country and as a sailor it's not an uncommon thing for you to do because your ship is going all over the world. I would say that your peers, your chain of command and Canadian citizens have some expectations for our sailors, airmen and soldiers. As a matter of fact, respect is expected from all people, all members in the Canadian Forces. And what you did was a clear lack of respect at that time, no matter what excuse you may have. People in uniform in a foreign country must behave accordingly to our principles in our country. As you didn't respect that and for me it's an aggravating factor. It was in a short period of time, but it's still a lack of respect;
 - ii.. the second thing is your criminal record and conduct sheet. It is true that everything on the criminal record comes from, I would be inclined to say, another life you had, the one prior of being in the Canadian Forces. It set perhaps the confidence in your behaviour in one way, in the sense it doesn't mean that people cannot have confidence in you, and I don't think you should pay for error for that, but it is in the picture. And for that I have to consider this, even though offences found on that criminal record are not clearly related to what you did, it's for different matters that you were found guilty, other offences. There's a list of serious crimes on it, but as I mentioned they are not in relation with the charge before this court, but I still have to consider it.

[15] There are also mitigating factors that I considered:

- (a) first, your guilty plea. Through the facts presented to this court it must consider your guilty plea as a clear, genuine sign of remorse and that you are very sincere in your pursuit of staying a valued asset to the Canadian Forces and it also disclose the fact that you are taking full responsibility for what you did;
- (b) there is also your age, 34 years old, and your career performance in the Canadian Forces. As a matter of career you're still young in the Canadian Forces, it's four years experience so far and as I understand you are doing well. And in fact, I suspect and I think I can infer that, that when you are on a ship you are doing well. It is more a matter of when you are

not on the ship you have to deal with some issues and you are working on that. But I have no doubt that when you are on the ship, when you are performing your work, I think you are doing well. And for that I have to consider that as a mitigating factor;

- (c) there is also the fact that you had to face this court martial after two years of waiting how it will end up. This court martial was announced and accessible to the public and took place in the presence of some of your peers, some of your superiors and 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 in those circumstances will not be tolerated in any way and will be dealt with accordingly. So being before me today still from my perspective had something with a deterrent effect on you. I don't think this is something you want to go through again, but also on others. And as I mentioned earlier, one of the principles I'm relying on in order to determine sentence is specific deterrent effect and general deterrent effect. General meaning on others and I think the fact of being here has such effect.
- (d) I also got from the evidence, not a lot from your testimony, but from some letters, from your attitude and from the report I got from the addiction counsellor that you have a clear determination to change. Because since that incident in 2011 you did some things for yourself and you want to take charge of your life and I recognize that and I want to encourage you to continue to do so. I think it's really important what you're doing, step-by-step you win all those little fights your going through, but you're doing well and it's a part of mitigation and the mitigating factors that I have to consider; and
- (e) also, it is my understanding that you have some support from people around you. You have some support from your chain of command. Clearly, as mentioned by the prosecutor maybe you didn't get so far your QL5 course, but over the last year or so you are not put aside, you had some courses in order probably to prepare you for the next phase would be your QL5. And also I see somebody behind you, sitting behind you from the beginning, and I think this person is very important for you and she's here today and she has been here yesterday and personally it's a clear sign that you have support. She does believe in you, I do believe in you and your chain of command is believing in you. And I think that it is something that I have to consider as a mitigating factor. You're not alone on this thing and it's part of factors that I have to consider. It means to me that it increase your chances to continue what you're doing for now, getting the life the way you want it to be.

[16] The first thing I have to consider is the fact that incarceration is appropriate in the circumstances, as suggested by counsel. As I mentioned earlier, you heard me that

it is a sanction of last resort. Meaning by this that I have to see if there is any other appropriate sentence or combination of sentence that would fit. I'm in circumstances where I've been suggested that there was no other appropriate sentence or combination of sentence, and as a last resort, incarceration must be considered by the court. Putting everything together, the nature of the offence, the context, the fact that the offence is a criminal offence *per se*, it's in the *Criminal Code*, the aggravating and mitigating factors, you have to see that it's a balance of those things that I have to do.

[17] I have to say that the suggestion made by counsel as there is no other sanction or combination of sanctions that incarceration appears to me reasonable even though it looks a bit harsh, but I do not find in this suggestion something unreasonable in the circumstances.

[18] Now, what would be the appropriate type of incarceration? As you know in the Canadian Forces and as you saw it when we had a look together to section 139, the scale of punishment, there's imprisonment and detention. Punishment of detention seeks to rehabilitate military members. And I know not just through the testimony of the major, but that counselling programmes to deal with specific matters may be available if it is required. Probably not in the way you are going through now at your own programme but you're still have access to some counsellor. And the other thing is that where you are at in your programme I think it is something if you go through incarceration, as suggested by counsel, you still have the necessary will to go through this with some help at that point, at that time, at that location, I would say.

[19] And I think, as suggested, it's not unreasonable that you go through detention. It's some kind of re-training focussed on military values. And I'm not saying that you don't respect all of them, but that's the purpose of detention and it will achieve the purpose here sending you the message that you're still a valid asset to the Canadian Forces. You're still a valid human being able to perform military tasks in the Canadian Forces and that's the message and I think it does fit properly as the type of incarceration.

[20] Now, also I would like to add that for sure in those circumstances where the court is dealing with what we call a "criminal offence" because this offence is coming from the *Criminal Code* the approach usually to this is to see it as being a tribunal dealing with a criminal not a service offence *per se*. But you have to know that if you had been charged of stealing according to section 114 of the *National Defence Act* for the same thing because there's two ways to approach this; the provision in the Code of Service Discipline is more serious than the one in the *Criminal Code* for a theft under \$5,000. So the maximum punishment you're facing here is two years and in the Code of Service Discipline it's seven years. So the message I got from that is the consideration given to the offence and the maximum punishment is that it's not so serious. It is still serious but not serious as it would have been necessary to charge you in accordance with a pure service offence such as section 114 of the *National Defence Act*.

[21] So the approach here instead of just seeing the criminal side of things, I approach this offence with both, a discipline offence because you were on duty; not on the

ship, on shore, but also they took it from the criminal offence perspective. So I take it a mix of both and detention I think is still appropriate in the circumstances.

[22] Now, about the duration, I think the length suggested by both counsel is appropriate, not unreasonable, 20 days. The maximum punishment for detention is 90 days. Twenty days is enough to pass the message in the circumstances but it does not impact from my perspective enough to jeopardize the programme you're going through about addiction. And I'm convinced with the support of people around you when you will come back from detention you're still in a position to succeed with what you started. And I think from that perspective 20 days is not unreasonable.

[23] In consequence, the court will accept the joint submission and the submission made by both counsel to sentence you to detention for a period of 20 days considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

[24] My wish as a judge and my humble perspective from the bench, because what I got in the last two days it's a small picture, I was told some things but for sure and it's part of the rules not everything, I am confident with this sentence that you will be able in some way to turn the page because there was and I'm still convinced there was no previous incident while you were in the Canadian Forces so far and I'm convinced that you're able to manage your life and your career in the Canadian Forces because you still have a career in the Canadian Forces in a way that no other incident will happen.

[25] Self-discipline is something difficult to achieve. Start with discipline, detention is about this, you will get back at some point self-discipline and you may take it to teach others. Your experience may serve your peers and if you have the chance, the privilege to go on your QL5 then you may become an experienced sailor as a leading seaman and maybe more; it belongs to you.

[26] And from that perspective I hope you will take this opportunity to make it positive even though it sounds negative. Nobody take it as something fun to go under detention for such a period of time, but I'm pretty sure that what you have started in your life in the Canadian Forces you will achieve it and don't let this stop you of your goals you want to achieve because so far you have been successful.

[27] Maybe the incident in 2011 was a wake up call. 2012 appears to me to be good and 2013 and there's a ship and some of your fellow sailors that are waiting for you at some point. So do this, turn the page and continue your work you are doing so far.

FOR THESE REASONS, THE COURT:

[28] **FINDS** you guilty of the first and only charge on the charge sheet, under paragraph 130 of the *National Defence Act* for theft, contrary to section 334 of the *Criminal Code*.

[29] **SENTENCES** you to detention for a period of 20 days.

Counsel:

Major K. Lacharite, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Colonel D. Berntsen, Directorate of Defence Counsel Services
Counsel for Able Seaman Thompson