



COURT MARTIAL

Citation: *R v Boivin*, 2011 CM 4014

Date: 20110528

Docket: 201070

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Ordinary Seaman S.J.J. Boivin, Offender

Before: Lieutenant-Colonel J-G Perron, M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Orally)

[1] Ordinary Seaman S.J.J. Boivin, having accepted and recorded your plea of guilty to the only charge before this Court, I now find you guilty of this charge, that is, of having trafficked on numerous occasions in a substance that you represented to be cannabis (marijuana), contrary to subsection 5(1) of the *Controlled Drugs and Substances Act*. I must now impose an appropriate sentence, which must be the minimum required sentence in the circumstances of the case to ensure that discipline is served.

[2] The Court Martial Appeal Court of Canada tells us at paragraphs 30 to 33 of its decision in *R v Private Tupper*, 2009 CMAC 5 that a military judge must consider the fundamental purposes and goals of sentencing set out at sections 718 and following of the *Criminal Code* of Canada.¹ The sentence must also be “proportionate to the gravity

¹ RSC 1985, c C-46.

of the offence and the degree of responsibility of the offender” (see section 718 of the Cr.C.) and should be “similar to sentences imposed on similar offenders for similar offences committed in similar circumstances” (see paragraph 718.2(b) of the Cr.C.). An offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. Section 718 of the *Criminal Code* reads as follows:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[3] Counsel for the prosecution suggests that the appropriate sentence for this offence is imprisonment for a term of 30 to 45 days. She states that in reaching her suggestion, she took into consideration the fact that you have been released from the Canadian Forces. She suggests that the most important sentencing principles are denunciation and general and specific deterrence. For his part, your counsel states that the appropriate sentence for this offence is imprisonment for a term of 7 to 14 days. To determine what constitutes the appropriate sentence in this case, I took into account the circumstances surrounding the commission of the offence as revealed in the statement of circumstances, which you have acknowledged to be true. I also considered the evidence that was filed, the case law and the submissions by counsel. I analyzed these various factors in light of the objectives and principles applicable in sentencing.

[4] You were a student at the Canadian Forces Language School at the Saint-Jean Garrison when Ordinary Seaman Marin, another student at that school, asked you whether you knew of a place where he could get cannabis. You had in your possession the telephone number of a person at the store “Jack accessoires pour fumeur” located in Saint-Jean-sur-Richelieu, who could sell him cannabis. You therefore contacted this dealer, who agreed to provide him with some. In March 2009, Ordinary Seaman Marin rode with you in your vehicle four times and, each time, gave you \$25. Each time, you went to purchase 3.5 grams of cannabis from the same store and gave the entire quantity to Ordinary Seaman Marin, who was waiting for you in your vehicle parked near the store. In this way, you performed four cannabis transactions of 3.5 grams each, for a total of 14 grams, on behalf of Ordinary Seaman Marin.

[5] At the end of March 2009, tired of purchasing cannabis for Ordinary Seaman Marin, you introduced Ordinary Seaman Marin to the cannabis dealer at the “Jack accessoires pour fumeur” store so that, in the future, he could purchase cannabis from the dealer directly. On 5 May 2009, Ordinary Seaman Marin was arrested for possession of cannabis by the military police at the Montreal Garrison. He was found guilty by summary trial, under section 130 of the *National Defence Act*, of possession of a substance contrary to subsection 4(1) of the *Controlled Drugs and Substances Act*. He was released from the Canadian Forces on 6 January 2010, following an administrative review.

[6] Having summarized the main facts of this case, I will now concentrate on sentencing. Therefore, in considering what sentence would be appropriate, I took into consideration the aggravating and mitigating factors that follow. I will begin with the factors mitigating the sentence:

- a. You have admitted your guilt. An admission of guilt, usually, is a sign of some remorse. Moreover, your plea saves the Crown large sums of money and eliminates the need to call more witnesses. You also cooperated with the investigators from the Canadian Forces National Investigation Service.
- b. Your young age of 21 years at the time of the offence and your lack of military experience are also mitigating factors, although I will have somewhat more to say about your experience in my description of the aggravating factors.
- c. You do not have a conduct sheet or a criminal record. You did not seek financial gain from these transactions or keep any cannabis for yourself.
- d. You were released from the Canadian Forces on 4 May 2011 under item 5(f) of article 15.01 of the QR&Os following an administrative review in accordance with DAOD 5019-2. You are currently unemployed.
- e. The letters in Exhibit 8 state that your performance had been good since you arrived in Halifax.

[7] I will now discuss the aggravating factors:

- a. The nature of the offence and the punishment provided for by Parliament. The maximum sentence is imprisonment for a term of five years less a day, considering the quantity of cannabis (marijuana) involved, that is, less than three kilograms.
- b. The Court has taken judicial notice of the contents of the QR&Os under section 15 of the *Military Rules of Evidence*. The Canadian Forces Drug

Control Program is covered at Chapter 20 of the QR&Os. Article 20.05 – Education, reads as follows:

- (1) The Chief of the Defence Staff shall establish programs to educate members of the Canadian Forces with respect to the use of or other involvement with drugs.
- (2) The education programs required by paragraph (1) should contain, as a minimum, information concerning:
 - (a) the types of drugs the use of which is prohibited by article 20.04 (*Prohibition*);
 - (b) the physical and psychological effects of drug use;
 - (c) the impact of drug use on the effectiveness of military forces, the safety of the member and others, the health of the member and the member's career; and
 - (d) the programs available to assist members who have problems with respect to the use of or other involvement with drugs.

- c. The Court also took judicial notice of the contents of DAOD 5019-3. DAOD 5019-3 tells us that

Specific drug education programs consist of:

informing applicants on enrolment in the CF, and CF members during recruit and basic officer training and leadership courses, of the content of QR&O Chapter 20 and this DAOD;

ensuring that CF members regularly receive drug awareness information under the Health Promotion Program in relation to the educational requirements under QR&O article 20.05;

- d. You enrolled in 2007. Exhibit 5, your Member Personnel Record Resume, states that you were posted to the Canadian Forces Leadership and Recruit School from September to December 2007 before you were released from the Forces. You enrolled a second time on 17 June 2008. You were again posted to the Canadian Forces Leadership and Recruit School from June 2008 to January 2009 and then, to the Canadian Forces Language School, Saint-Jean detachment. So, it appears that you had the advantage of being posted twice to the Canadian Forces Leadership and Recruit School.
- e. All Canadian citizens know that drug trafficking is prohibited and that Canadian laws punish this offence severely. As well, you were surely aware of the Canadian Forces Drug Control Program, having attended the Canadian Forces Leadership and Recruit School. In spite of that, you decided to help another military member obtain marijuana. There is no

clear evidence before this Court that you used marijuana during your military career. However, the facts clearly show that you knew a person who sold marijuana and had his telephone number on your person. If you were not involved in that world, why did you have that information?

- f. You helped another military member obtain an illegal drug. You guided a buyer, another ordinary seaman, to a drug dealer. These two persons did not know each other before you became involved in this drug trafficking. Four times, you used your vehicle to take Ordinary Seaman Marin to this drug dealer and facilitated illegal transactions. This involves a certain level of planning, since you coordinated those four transactions over a period of 31 days. It seems that you facilitated this drug dealing to help a friend. That kind of help contributes to the commission of offences contrary to the *Code of Service Discipline* and, by that very fact, undermines the effectiveness of the Canadian Forces. This is not the kind of help that we want to see within the Canadian Forces. Your actions show me that you were no stranger to the culture of illegal drugs.
- g. Your commander at the time of your release from the Canadian Forces stated in his letter at Exhibit 8 that you had learned from your first mistake because you notified your superiors and the military police when a Canadian Forces member asked you how to obtain illegal drugs. Is this a case of having learned from a first mistake or of believing that you might get caught again? I leave it up to your superiors to draw the right conclusion. All the better if you have learned a good lesson, but it seems that you had not yet understood this in March 2009, despite the fact that drug trafficking is illegal in Canada and that the use of and traffic in drugs is penalized more harshly in the Canadian Forces.
- h. In paragraph 39 of its decision in *R v Ordinary Seaman M. Lee*, 2010 CMAC 5, the Court Martial Appeal Court confirmed the principle that drug trafficking must be taken very seriously within the military. Marijuana is often described as a “soft” drug. Clearly, Canadian criminal law deals less severely with the possession and traffic of marijuana than the possession and traffic of other drugs, such as cocaine. Nonetheless, considering the impact of drug use on the effectiveness of military forces, the safety of military members and the health of the military member concerned, we cannot allow trafficking in any illegal drug to be excused or trivialized.

[8] The parties agree that a sentence of imprisonment is appropriate in this case but do not agree on the term. I reviewed the case law presented by counsel for the prosecution and your counsel. These decisions present situations in which there are similar and dissimilar facts in comparison to this case, and none of those situations is identical to your own. I agree with counsel that the case law of the Court Martial

Appeal Court and of the Courts Martial indicates that imprisonment is the appropriate sentence in this case.

Ordinary Seaman Boivin, please stand up.

[9] You have lost the privilege of serving in the Canadian Forces. At Exhibit 7, you state that you wish to remain in the Canadian Forces. You now seem to realize that the CF could give you a chance to improve your life. Unfortunately, you failed to use the tools you were given to reach those objectives. It is now too late. I hope that you have learned your lesson well from this affair.

[10] Given the aggravating and mitigating factors and the need to denounce the offender's conduct and to dissuade such illegal activities within the Canadian Forces, I would have considered a sentence of 45 days' imprisonment. However, I am taking into account the fact that you have been released from the Canadian Forces and are taking a mathematics course at the Dalhousie University from July 4 to August 27. This course is a prerequisite for you to enrol in the Aircraft Mechanic Engineer program at Nova Scotia Community College this fall. I am also taking into account the letter from Commander Quinn, your last commander, who recommended that you be allowed to remain in the Canadian Forces. I must also consider the offender's potential for rehabilitation and the efforts the offender makes to improve his or her lot and become a productive citizen.

[11] Given the particular facts of this case, I am of the opinion that the sentence I am about to impose adequately incorporates the sentencing principles and that the choice of sentence is the minimum possible intervention in the circumstances to ensure the protection of the public and the maintenance of discipline and to foster's the offender's rehabilitation.

FOR THESE REASONS, THE COURT

[12] **SENTENCES** Ordinary Seaman Boivin to imprisonment for a term of 30 days.

Counsel:

Major A. St-Amant, Canadian Military Prosecution Service
Counsel for the Her Majesty the Queen

Lieutenant-Commander P. Desbiens, Directorate Defence Counsel Services
Counsel for Ordinary Seaman S.J.J. Boivin