COURT MARTIAL

Citation: *R v Nadeau*, 2011 CM 4016

Date: 20110613
Docket: 201120

Standing Court Martial

Colonel Gaétan Côté Armoury
Sherbrooke, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal M.J.E. Nadeau, Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Orally)

[1] Corporal Nadeau, having accepted and recorded your plea of guilty on the first charge, I now find you guilty of this charge, that is, of having received property obtained by the commission of a service offence, knowing that this property had been so obtained. I must now impose an appropriate punishment, which must be the minimum punishment required 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 *Private R.J. Tupper v. Her Majesty the Queen*, 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*.[1] The sentence must also be "proportionate to the gravity of the offence and the degree of responsibility of the

[1] R.S.C. 1985, c. C-46.

offender"[2] and should be "similar to sentences imposed on similar offenders for similar offences committed in similar circumstances".[3] An offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. Section 718 of the *Criminal Code* states that the fundamental purpose of sentencing is to contribute 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;
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> (*b*) to deter the offender and other persons from committing offences;
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> (*c*) to separate offenders from society, where necessary;
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> (*d*) to assist in rehabilitating offenders;
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> (*e*) to provide reparations for harm done to victims or to the community; and
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> (*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 and your counsel have presented me with a joint submission on sentencing and are recommending that I impose a reprimand and a $1,500 fine payable in three monthly payments of $500. The final decision in determining an appropriate sentence lies with the judge, who has the right to dismiss counsel's joint submission. However, I must accept counsel's joint submission unless it is found to be inadequate, unreasonable or contrary to public order, or would bring the administration of justice into disrepute. 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 submissions by counsel. I analyzed these various factors in light of the objectives and principles applicable to sentencing.

[4] On October 9, 2009, Military Police Platoon Valcartier was contacted by a person who refused to identify himself or herself and who stated that you had proudly mentioned over the summer that you had smoke bombs and military-type cartridges in your possession. A military police officer met with you on November 9, 2009. During this interview, you freely and voluntarily admitted having pyrotechnics and service ammunition in your possession. You were keeping these items of property as trophies. You stated that you had no malicious intentions with respect to the use of this property. You had collected this property during exercises with your unit and during training of the 01-09 Task Force. You failed to uphold the verbal declaration of ammunition you made at the end of each exercise that you had no bullets, casings or explosives in your

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[2] See section 718.1 of the Cr.C.
[3] Paragraph 718(*b*) of the Cr.C.

possession. You also stated that you had used parachute flares and an artillery simulator at your grandfather's place to give your family members a demonstration.

[5] On 9 November 2009, this military police officer, accompanied by a police officer of the Ville de Sherbrooke police force, requested your permission to search your home. You agreed and signed the documents authorizing the warrantless search of your home. During the search, the police officers found one (1) C8 hand smoke grenade; one (1) C7 parachute flare; ten (10) thunderflash C1A1s; ninety-one (91) 5.56-mm blank cartridges; twenty-six (26) 7.62-mm blank cartridges; seventy-six (76) 7.62-mm loaded cartridges; and one (1) 0.5-inch loaded cartridge. These objects were located in a desk in your bedroom. All of these items of public property belong to the Department of National Defence. They have a value of $196. The explosive devices and the ammunition seized during this search were not and had not been handled, transported or stored in compliance with the specific directions set out in the manual entitled "Ammunition and Explosives Safety – Volume 1 – Storage and Transportation"[4] published with the authorization of the National Defence's Chief of the Defence Staff.

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

> You have admitted your guilt. You also cooperated immediately with military police officers. An admission of guilt and cooperation with a police investigation are usually signs of some remorse. Moreover, this plea allows the Crown to save large sums of money and eliminates the need to call many witnesses. This cooperation since the very beginning of the police investigation is an important mitigating factor.
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> Your young age of 21 years at the time of the offence is also a mitigating factor that I am taking into account. You do not have a conduct sheet or a criminal record.
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> The charges were laid in a Record of Disciplinary Proceedings dated 11 January 2011. The application to the Referral Authority for the charges was received on 21 February 2011. The police officers had a complete statement by Corporal Nadeau in which he admitted having committed the offence of receiving, and had conducted a search and recovered property belonging to the Minister of National Defence on 9 November 2009. There has therefore been a pre-charge delay of 14 months and a post-charge delay of five months. Truthfully, a post-charge delay is not extraordinary. However, the Court believes that the pre-charge delay should not go unmentioned. The Court was given no explanation for this delay, other than that the unit had waited some time before laying charges. I do not know what charges were laid on 11 January 2011, and I

[4] C-09-153 001/TS-000.

am fully aware that any conclusion must be supported by the evidence presented at trial. That being said, it seems to me that the choices made by the authorities in this case do not promote discipline or further Corporal Nadeau's interests.

This is a relatively simple case. Corporal Nadeau admitted his actions at his first meeting with military police. The property was in the control of military police as of 9 November 2009. It is obvious that a police investigation report could be completed and given to the unit in short order. It was then possible to draft and lay charges in little time. Depending on the type of charges laid against Corporal Nadeau, a summary trial could have been held, since a commanding officer may try by summary trial an accused person who has committed one or more of the offences listed at article 108.07 of the QR&Os if the summary trial begins within one year after the day on which the service offence is alleged to have been committed: see subsection 163(1.1) of the *National Defence Act*. Therefore, for example, the commanding officer could have tried Corporal Nadeau by summary trial if Corporal Nadeau had been charged with stealing, section 114 of the *National Defence Act*; receiving, section 115; injurious or destructive handling of dangerous substances, section 127; or conduct to the prejudice of good order and discipline, section 129, if this trial had begun before 9 November 2010. Considering Corporal Nadeau's cooperation with the police investigation and his plea of guilty, it is highly likely that he would have consented to be tried summarily by his commander. A summary trial within the unit some time after the offence is generally more beneficial for discipline within the unit and for the offender than is a trial by court martial 19 months later. I therefore consider this delay to be a significant mitigating factor.

The letters of performance found at Exhibit 10 state that your performance was excellent while you were employed in the kitchen at Camp Vimy, Valcartier, for the period from 10 May to 1 September 2010. I also note some comments made in your personnel evaluation report when you were deployed in Afghanistan from April to September 2009, at Exhibit 9. The following comments were made under section 4, performance: [TRANSLATION] "Young and inexperienced, he showed maturity and professionalism in life at camp and on patrol", and [TRANSLATION] "On a number of occasions, during contact with the enemy, he reacted well by remaining calm. In short, Cpl Nadeau is an effective and professional military member in whom we can have confidence". I also note the following comments under section 5, potential: [TRANSLATION] "During this evaluation period, Cpl Nadeau showed average potential for his rank. With the experience acquired since the beginning of the rotation, he has begun participating and making decisions at a section level. His experience acquired on tour will benefit him greatly in the future. . . . Should he want to join the Regular Force, I would support his application without hesitation".

I also note that the ammunition and all of the pyrotechnics, except for those used at your grandfather's place, were recovered.

[7] I will now discuss the aggravating factors:

> The nature of the offence and the punishment set out by Parliament. The maximum punishment for this offence is imprisonment for a term not exceeding seven years. This is a serious offence, since only 21 of the 60 service offences described at sections 73 to 129 of the *National Defence Act* carry more a severe maximum punishment than the punishment set out at section 115.
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> Subjectively, this is also a serious offence. You lied to your chain of command on numerous occasions in order to commit the offence. You had approximately four years' experience with the Sherbrooke Fusiliers Regiment when you committed this offence. You had to have been very well aware of the importance we attach to ammunition and pyrotechnics handling and the importance we place on the honesty of our soldiers regarding conduct on ranges and during exercises. You kept pyrotechnics, namely one C8 hand smoke grenade, one C7 parachute flare and ten thunderflash C1A1s, and blank and loaded cartridges in a desk in the bedroom of your apartment. That is a significant amount of ammunition.
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> You showed a great lack of maturity in illegally taking this property and keeping it in your home and in using parachute flares and an artillery simulator at your grandfather's place. Although there is no evidence before me that your actions represented a risk for anyone, it does not take a genius to understand that keeping pyrotechnics in one's bedroom can present risks of bodily injury and material damage.

Corporal Nadeau, please stand up.

[8] Corporal Nadeau, your lack of maturity is costing you dearly today. That cost is much more than this sentence. Your international adoption proceedings will have to be set aside for some time, since you now have a criminal record. You wish to remain a member of the Canadian Forces. Considering the comments in your annual performance report, it seems to me that you will be able to become a productive military member if you can maintain the same maturity and seriousness you previously showed while deployed in Afghanistan and during the following summer at Valcartier. It is up to you to prove to your chain of command that this offence was only a youthful error and that it has served as a lesson to you.

[9] I agree with the recommendation of counsel for the prosecution that it is not necessary for the safety of the offender or of any other person to make an order under section 147.1 of the *National Defence Act* prohibiting the offender from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.

[10] Considering the particular facts of this case, I am of the opinion that the sentence I will now impose adequately incorporates the sentencing principles and is the

minimum possible sentence to ensure the protection of the public and the maintenance of discipline in the circumstances. Both the denunciation of the act and the rehabilitation of the offender must be considered.

FOR THESE REASONS, THE COURT:

[11] **FINDS** you guilty of the first charge.

[12] **DIRECTS** a stay of proceedings on the second charge.

AND

[13] **SENTENCES** Corporal Nadeau to a reprimand and a fine of $1,500. This fine will be paid as follows: $500 on 30 June, $500 on 31 July and $500 on 31 August 2011.

Counsel:

Major St-Amant, Canadian Military Prosecution Service
Captain M.J.M. Côté, Deputy Judge Advocate's office, Valcartier Garrison
Counsel for Her Majesty the Queen

Lieutenant-Commander P. Desbiens, Directorate Defence Counsel Services
Defence counsel for Corporal M.J.E. Nadeau