



COURT MARTIAL

Citation: *R. v. Cole*, 2010 CM 4003

Date: 20100122

Docket: 200953

Standing Court Martial

Canadian Forces Base Gagetown
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

– and –

Private C.A. Cole, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Private Cole, having accepted and recorded your plea of guilty to charge No. 2, the court now finds you guilty of this charge laid under s. 114 of the *National Defence Act*. You have pled guilty to stealing C4 explosives, a time fuse, and a detonation cord. Charge No. 1 has been withdrawn by the prosecution. The court must now determine a just and appropriate sentence in this case.

[2] The statement of circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, and your testimony provide this court with the circumstances surrounding the commission of this offence. Your counsel has presented two exhibits during the sentencing phase of this trial.

[3] The prosecution and your defence counsel have jointly proposed a sentence of a fine in the amount of \$600 to be paid on the next pay day. The prosecutor has not requested the court make a weapons prohibition order in the present case.

[4] The principles of sentencing, which are common to both courts martial and civilian criminal trials in Canada, have been expressed in various ways. Generally, they are founded on the need to protect the public and the public includes the Canadian Forces. The primary principles are the principles of deterrence that includes specific deterrence in the sense of deterrent effect on you personally as well as general deterrence; that is deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct and last but not least the principle of reformation and rehabilitation of the offender.

[5] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[6] The court has considered the guidance set out in ss. 718 to 718.2 of the *Criminal Code of Canada*. The purposes of sentencing found in those sections are to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community, and to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community.

[7] The court is required, in imposing a sentence, to follow the directions set out in article 112.48 of Queen's Regulations and Orders which obliges it in determining a sentence to take into account any indirect consequences of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[8] The court must impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society. Discipline is that quality that every Canadian Forces member must have which allows him or her to the interests of Canada and the interests of the Canadian Forces before personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences such as injury and death. I describe discipline as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training, and practice; it is an internal quality that is one of the fundamental prerequisites to operational efficiency in any armed force.

[9] You joined the Canadian Forces in September 2007. You were posted to the Canadian Forces School of Military Engineering in December 2007, and you were a candidate on the Combat Engineer DP1 course at the time of the offence. During this course, you were taught how to handle C4 explosives. During the period of 20 June to 6 July 2008, you stole 0.21 pound, which is 94.92 grams, of C4 explosives, 0.76 meter of time fuse and one meter of detonation cord. On 6 July 2008, your roommate reported to the chain of command that he had seen these items in your personal effects.

[10] You were arrested on that day and these items were recovered. You fully cooperated with the military police investigation and admitted having stolen these items on two separate occasions. You recognized the foolishness and unlawfulness of your actions. When you stole those items, you had made declarations stating that you had no explosives in your possession.

[11] You were taken off that course on 7 July and you were not allowed to complete your qualification. You have remained within the CFSME Personnel Awaiting Training Troop where you have been assigned general duties and have been employed as a driver. While your conduct has remained acceptable during that time, the procedure leading to your compulsory release under item 5F were initiated and you are appealing that process because you wish to remain in the Canadian Forces.

[12] You testified and informed the court that you are now married and that your wife will give birth in early March of this year. You have applied for parental leave from 6 March to 5 June 2010. When asked by your counsel to explain the reason for this theft, you explained that there is no reason but that it was a lack of judgement on your part and that you regret it.

[13] I will now set the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I consider the following to be aggravating:

The offence of stealing is objectively a serious offence under the Code of Service Discipline. The nature of the material stolen is also subjectively serious; the theft of any explosives from the Canadian Forces cannot be taken lightly. You stole C4 explosives, a time fuse, and some detonation cord. The evidence before this court does not reveal to me that you had all of the necessary components to effectively cause an explosion, but the Statement of Circumstances found at Exhibit 6 indicates that this material is sufficient to cause significant harm to persons and damage to property. Therefore, the very nature of the stolen material makes it an aggravating factor. Having said this, it appears that the quantity of C4 explosives is quite small.

While it is not a situation of stealing the public property while you were entrusted with the care or the control of it, I find that, by your actions, namely providing a false declaration and stealing these items during your training, you in fact did abuse the trust that was put into you by the Canadian Forces.

As to the mitigating circumstances, I note the following:

You do not have a conduct sheet. You are a first time offender. You were almost 28 years old at the time of the offence. You had been a member of the Canadian Forces for less than a year at the time of the offence. While I do consider your lack of experience in the Canadian Forces as a mitigating factor, I do not consider you a youthful offender. You were but a few months shy of

your 28th birthday, you were not 18, 19 or 20. You were old enough to know better than to steal explosives from a Canadian Forces training range.

You have pled guilty and fully cooperated with the military police investigation. Canadian jurisprudence generally considers an early plea of guilty and cooperation with the police as tangible signs that the offender feels remorse for his or her actions and that he or she takes responsibility for those illegal actions and the harm done as a consequence of these actions.

Therefore, such cooperation with the police and an early plea of guilty will usually be considered as mitigating factors. Although the doctrine might be divided on this topic, this approach is generally not seen as a contradiction of the right to silence and of the right to have the Crown prove beyond a reasonable doubt the charge laid against the accused but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usually means that witnesses do not have to testify and that it greatly reduces the costs associated with the judicial proceeding. It is also usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions.

You have testified and you have expressed remorse. You also expressed your remorse during your interrogation by the military police. The court accepts that you do regret your actions and that you do take responsibility for this offence.

You might well be released from the Canadian Forces under item 5F, but I have not been provided any evidence that would indicate that this is a fait accompli. Exhibits 7 and 8, the letters of recommendation from Sergeant Innes and Master-Corporal Taylor, describe you as a professional and reliable member of the Canadian Forces. They are both of the opinion that you can become an excellent soldier if given a second chance. It is up to your chain of command and to the competent authorities at National Defence Headquarters to make that determination.

It appears to me that you now fully realize that you made some foolish decisions in 2008. You must now live with the consequences of these decisions. Exhibits 7 and 8 seem to indicate that, given a second chance, you can prove that you deserve to be a member of the Canadian Forces.

[14] Private Cole, stand up. You have taken full responsibility for your actions.

[15] In determining the appropriate sentence, the court has considered the circumstances surrounding the commission of this offence, the circumstances of the offender, the evidence presented during the sentencing phase, the mitigating factors and the aggravating circumstances in this case, the cases presented by the prosecutor, the representations by the prosecution and by your defence counsel and also the applicable principles of sentencing.

[16] I agree with the prosecution that the sentence must reflect primarily the principle of general deterrence but must also consider rehabilitation.

[17] The Court Martial Appeal Court has stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[18] I trust that these disciplinary proceedings will impress upon you and anyone who will become familiar with them that the theft of explosives is a serious breach of the Code of Service Discipline. The present sentence is reflective of your cooperation with the military police, your guilty plea and your display of remorse throughout these proceedings.

[19] Having reviewed the case law presented by the prosecutor, I find that the proposed sentence is at the lenient end of the sentencing spectrum. Having said this, I take into account the comments of defence counsel pertaining to the factors that were considered by the prosecutor and by defence counsel when arriving at this joint submission. Therefore, it is my conclusion that the proposed joint submission, while quite lenient, is not one that would bring the administration of justice into disrepute or otherwise is not in the public interest.

[20] Private Cole, I sentence you to a fine in the amount of \$600 to be paid at the end of the month of January 2010.

[21] I have reviewed the provisions of section 147.1 of the *National Defence Act*. Having considered the nature of the present offence and circumstances of its commission, I have come to the conclusion that an order prohibiting you from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance or all such things is not required in the interests of the safety of any person. I will not make such an order.

[22] The proceedings of this Standing Court Martial in respect of Private Cole are terminated.

Counsel:

Major J. Caron, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Colonel T. Sweet, Directorate of Defence Counsel Services
Counsel for Private C.A. Cole