



COURT MARTIAL

Citation: *R v Martin*, 2013 CM 3029

Date: 20131031

Docket: 201334

General Court Martial

Canadian Forces Base Esquimalt
British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Ordinary Seaman A.W. Martin, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Ordinary Seaman Martin was found guilty by this General Court Martial of three offences: one under section 97 of the *National Defence Act* for drunkenness; the second one for an act to the prejudice of good order and discipline pursuant to section 129 of the *National Defence Act*; and the third one for having wilfully made a false statement in a document signed by him that was required for official purpose pursuant to section 125 (a) of the *National Defence Act*. As the military judge presiding at this General Court Martial, it is now my duty to determine the sentence.

[2] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. The military justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[3] 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 mo-

rale among the Canadian Forces (see *R v Généreux* [1992] 1 SCR 259 at 293). The Supreme Court of Canada also recognized in the same decision recognized at paragraph 31 that:

Service tribunals thus serve the purpose of the ordinary criminal courts, that is, punishing wrongful conduct, in circumstances where the offence is committed by a member of the military or other person subject to the Code of Service Discipline.

[4] 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, the prosecutor is suggesting sentencing the offender to a reprimand and a fine between the amount of \$1,500 to \$2,000. Ordinary Seaman Martin's defence counsel recommends the same principle, a reprimand and a fine, but with a lower amount for the fine.

[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 the 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 a sentence, a military court must also take into consideration the following principles:

- (a) a sentence must be proportionate to the gravity of the offence;
- (b) a sentence must be proportionate to the responsibility and previous character of the offender;
- (c) a 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 established by the Court Martial Appeal Court of Canada 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] The court is of the opinion that sentencing in this case should focus on the objectives of denunciation and general deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also to deter others in similar situations from engaging in the same prohibited conduct.

[10] Here the court is dealing with three military offences that have some common ground. Those offences involve some ethical principles for members of the Canadian Forces such as responsibility and integrity. A member of the Canadian Forces must be reliable at all times in order to make sure that missions are accomplished; also that fellow members must be in a position to rely on each other, and these offences contain those principles

[11] On 14 September 2012, in order to obtain from Ms Ming Miao, owner of the convenience store, Ming Ming Variety Store, in Victoria, British Columbia the amount of \$115, Ordinary Seaman Martin left, on the request of Ms Miao, his identification card. He did that without receiving any authorization to do so by his supervisor or his chain of command. On 10 October 2012, Ordinary Seaman Martin signed and submitted a form for the explanation of loss of his identification card, on which he explained that while he conducted home repairs, he may have mixed his identification card with materials being thrown out. However, on 15 November 2012, his supervisor found and recovered his identification card from Mr Ming Miao. On 28 December 2012, Ordinary Seaman Martin showed up in the morning at the OJPR cell. He stumbled as he came in and his speech showed signs of intoxication. At that time, he was at CFB Esquimalt, he

had a little slurred speech, his breathe smelled of alcohol, he was on his training phase and he was supposed to work on training packages. On that day he was relieved of all duties because he was drunk.

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

- (a) The court considers as aggravating the objective seriousness of the offences. The offences you were charged with were laid in accordance with, for the first one, section 197 of the *National Defence Act* for drunkenness. This type of offence is punishable by imprisonment for less than two years. The second offence, an act to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*, is an offence punishable by a maximum punishment of dismissal from Her Majesty's service or to less punishment. Finally, the third offence, laid in accordance with section 125 (a) of the *National Defence Act* is punishable by imprisonment for three years or to less punishment.
- (b) Secondly, the subjective seriousness of the offences, and it covers two aspects from my perspective:
 - (1) First is the abuse of confidence that the commission of these offences discloses to the court. Your supervisors and your peers had some confidence in you. You decided for some reason to leave with a civilian your identification card. By doing so, those who thought that you were reliable and could have confidence in you as a matter of security were wrong. Also, to make it worse, a month after, you decided to report your card as being lost, and for that purpose you made a statement knowing clearly that it was false. You again abused the confidence of your supervisors about that issue. Finally, they thought that you could handle properly your life and your way to behave, considering your experience and despite that, in December of 2012, you showed up at work drunk. Again you abused their confidence and you put at risk your peers, your supervisors who counted on you to accomplish your task and your mission. In order to perform their mission, they thought that you would be reliable, and this is what I mean when I talk about abuse of confidence.

- (2) Also, the second aggravating factor, from my perspective, is the premeditation. In order to proceed with this loan, you had to give some thought about it. It is not on the spur of the moment that you decided that you will borrow \$115 and leave your card there, so you gave it some thought. The second thing is the fact that in order to fill out the form you did on 10 October 2012 to report your identification card as lost, you had to give also some thought to it. So it is a clear premeditative aspect that I have to consider.

[13] These are the factors that the court considers as aggravating. However, there are also mitigating factors that I have to consider:

- (a) First, there is your age and career potential in the Canadian community. Being 32 years old, you still have many years ahead to contribute positively in Canadian society.
- (b) There is the fact that you had to face this court martial which was announced and accessible to the public and which took place in the presence of some of your peers and has, no doubt, had a very significant deterrent effect on you, but also on them. It sends the message to others that the kind of conduct you displayed regarding integrity and responsibility will not be tolerated in any way and will be dealt with accordingly.
- (c) There is the fact that there is no annotation on your conduct sheet whatsoever for similar conduct or any other conduct that would disclose problems with the Code of Service Discipline.
- (d) There is also your decision to face your problems, and I think this last incident in December 2012, or some time after that, was the moment where you decided to face the issues you were dealing with about consumption of alcohol. This would probably explain some of your behaviour, and because you decided to deal with that matter, I have to consider this as a mitigating factor.
- (e) Also, the evidence disclosed that you established a plan for your future, because you anticipate to be released from the Canadian Forces.
- (f) You also reimbursed, as I understand, recently, in July according to the evidence, the person from whom you got the money, the \$115, and I have to consider that also as a mitigating factor.

[14] Then, from my perspective, I am ready to accept the submission made by both counsel about the principle of imposing a reprimand and a fine, because it is not contrary to public interest and would not bring the administration of justice into disrepute.

[15] Now, about the amount. I gave some thought to this, and I gave also some consideration to your financial situation. But also, on the other side, because I have to balance things, I have to consider other factors, and I came to the conclusion that a fine of \$1,000 would serve the interest of justice.

[16] I am pretty sure you learned a lot though this experience of a court martial and you had some time to think about different aspects of justice, but also different aspects of attitude and behaviour to have at work. I wish and I understand that you may keep that as an experience; not necessarily a good experience, but there is some good you can take from it for your future. As I mentioned, at the age of 32, people expect some kind of maturity, so there is a lesson learned from that experience. Also, you have to keep on your mind that you are getting today a criminal record and it is not something insignificant in the circumstances.

FOR THESE REASONS, THE COURT:

[17] **SENTENCES** you to a reprimand and a fine in the amount of \$1,000. The fine is to be paid in monthly instalments of \$100 each, commencing on the 1st of November, 2013, and continuing for the following nine months

Counsel:

Lieutenant-Commander S. Torani, Canadian Military Prosecutions Service
Counsel for Her Majesty the Queen

Lieutenant-Colonel D. Berntsen, Directorate of Defence Counsel Services
Counsel for Ordinary Seaman Martin