



COURT MARTIAL

Citation: *R. v. Goulet*, 2010 CM 1017

Date: 20101021

Docket: 201041

Standing Court Martial

Canadian Forces Base Valcartier
Courcellette, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Ex-Private A.M.T. Goulet, Offender

Before: Colonel M. Dutil, C.M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Rendered orally)

[1] Ex-Private Goulet pleaded guilty to the following three counts: firstly, to the second count, for having improperly sold property belonging to another person who is subject to the Code of Service Discipline, contrary to paragraph 116(b) of the *National Defence Act*; secondly, to the third count, for having wilfully damaged public property, contrary to paragraph 116(a) of the *National Defence Act*; lastly, to the fourth count, for having committed an act to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*. The Court has accepted and recorded these admissions of guilt and ordered a stay of proceedings regarding the first and fifth counts.

[2] The circumstances of this case took place or began at the Valcartier Garrison:

In early 2009, B Company, 1 Battalion, Royal 22e Régiment, was in Texas on an exercise, during which Private Goulet became friends with Private Thibault. On returning from the exercise in March 2009, Private Thibault, at the request of and as a favour to Private Goulet, readily agreed to lend him his personal laptop, worth \$1400. At the time, Private Goulet had claimed that his computer would not work properly whenever he went on the Internet. Some months later, Private Thibault asked Private Goulet whether he could have his laptop back. Private Goulet told him then that the computer he had loaned him had needed to be sent off to be fixed because of a malfunction. In July 2009, Private Goulet told Private Thibault that the computer had been fixed but that he could not give it back because it was at his father's house on Île d'Orléans. He explained that he would bring it back before the break in July, which he did not do. On their return from their break, in early August, Private Goulet told his friend Thibault that the computer had been stolen while he was on leave. They therefore agreed that Goulet would pay Thibault \$800 in several instalments for the loss incurred. Private Goulet then asked Private Thibault to give him the receipt for the computer, to give to the military police. He stated that he would work everything out with him once he had news from the military police.

However, in reality, on 27 July 2009, Private Goulet had already contacted the military police to report that his room in Module 18 of Building 302 had been broken into. He told the military police that he had left his residence on 3 July 2009, for three weeks and that, on his return at the end of July 2009, he had noticed that the door to his room had been forced open or broken down. He stated that the items that had been stolen were his personal laptop, without specifying that it had belonged to Private Thibault, and an X-Box 360 game console. He also mentioned that he could provide the police with proof of purchase of these objects. He prepared a statement to that effect on filing his complaint. That same day, Private Goulet went with the police to the scene so that they could note the condition of the premises. In the ensuing days, the police launched their investigation, questioning residents of the module in question. None of the residents had known of this break-in.

Some days later, the military police tried unsuccessfully to get in touch with Private Goulet. On 17 August 2009, they managed to speak with him using a new telephone number obtained from Private Goulet's father. Private Goulet told them then that he wanted to meet with them to expedite the process, as he needed their report to finalize his departure from single quarters.

During that period, Private Thibault had asked Private Goulet what had happened after he had approached the police. Private Goulet had told him that he was still waiting for the results of the investigation.

Dissatisfied with this, Private Thibault went directly to the military police station on 27 August 2009. That was when the police learned that Private Goulet had lied to them, since the computer that had been reported stolen belonged not to him but to Private Thibault.

On 4 September 2009, Private Goulet again met with the military police, at their invitation. During the first 30 minutes of the interview, Private Goulet corroborated his original statement, adding a few new facts, including the theft of some hockey equipment. After some words exchanged by the police officers, Private Goulet ended up admitting that he was not the owner of the laptop and that he had sold it to Instant Comptant, a pawn shop, on 21 March 2009. He admitted then that he had borrowed the computer from his friend Thibault in order to subsequently sell it without his friend's consent and unbeknownst to him. He also admitted that he still had his X-Box 360 game console and hockey equipment. In addition, he stated that, prior to the beginning of July 2009, he himself had broken down the door to his room to make it appear as though a theft had occurred.

On 15 September 2009, Private Thibault, accompanied by the military police, went to recover his laptop directly from Instant Comptant. At that point, Private Thibault had to pay \$160 to recover his own personal computer.

Regarding the damage to his room, losses were valued at approximately \$100.

This concludes the summary of the circumstances surrounding the commission of the offences.

[3] This morning, counsel in attendance presented a joint submission to the Court regarding the sentence that this Court should impose. Counsel have recommended that the Court sentence you to a severe reprimand and a \$1000 fine. Counsel submit that the severe reprimand is relevant and important in the context of this case, even though the offender was released from the Canadian Forces prior to this Court Martial, because it is specifically intended to fulfill the general deterrence objective here. However, it should be understood that the obligation to determine an adequate sentence lies with the Court. The Court has the right to reject a joint submission but may do so only if it has compelling reasons to disregard that recommendation. Therefore, the judge should accept counsel's joint submission unless it is found to be inadequate or unreasonable, contrary to public order or such that it would bring the administration of justice into disrepute, for example, if it were outside the range of sentences previously imposed for similar offences. Correspondingly, counsel are required to present all of the facts in support of this joint submission to the judge.

[4] At the sentencing hearing, in addition to the statement of circumstances, the standard documents on the service of the accused and the information on his pay and allowances, the documentary evidence shows, in particular, that the offender has a stable job where he is well liked and that he is an active member of a senior hockey team in a league in Mauricie. The accused has a conduct sheet, with all of the convictions relating to repeated absences without leave, but he has no criminal record. Ex-Private Goulet is 23 years old. He was 22 at the time of the commission of the offences. He has since been released from the Canadian Forces under release item 5(f), that is, for being unsuitable for further service, and this release item 5(f), obviously, is the one found in the table to article 15.01 of the Queen's Regulations and Orders for the Canadian Forces. Such a release generally applies to the release of members who, either wholly or chiefly because of factors within their control, develop personal weakness or behaviour or have domestic or other personal problems that seriously impair their usefulness to or impose an excessive administrative burden on the Canadian Forces. In the specific case of ex-Private Goulet, he was released for having violated the Canadian Forces' policy on drugs. His military career lasted only four years or so in the Royal 22e Régiment.

[5] This morning, defence counsel also filed in evidence, with the consent of counsel for the prosecution, a document signed by ex-Private Goulet in which he states that he agrees to consult substance abuse specialists. This agreement also includes the promise made by the offender's mother that she will support him in his efforts. Defence counsel filed another document, this time signed by the victim, confirming that he has received \$800 from the offender: \$500 in cash and a cheque for \$300 signed by ex-Private Goulet's mother.

[6] Yesterday, the Court heard the testimony of ex-Private Goulet and of his mother, Ms. Blouin. Ex-Private Goulet testified that, at the time of the commission of the offences, he had a serious cocaine problem and that this problem was the main reason for his repeated absences without leave and the commission of the offences before this Court. First, he had to work nights to pay for his drug use, but he also had to report to his unit the morning after to carry out his military duties. Furthermore, his employment earnings had become insufficient. By his own admission, this downward spiral prompted him to take his friend's computer and sell it to pay for his drug use. Thereafter, the situation led him to lie, claiming that the computer had been stolen from him, and even going as far as damaging the door to his room in single quarters to corroborate that fraudulent theory. This scheme came to an end when he was confronted by the police and finally admitted that everything had been a complete fabrication. Ex-Private Goulet reimbursed his former friend, albeit quite late, on 21 October 2010, for his act by giving him \$800, whereas Private Thibault had had to pay \$160 to recover his computer at the pawn shop. Ex-Private Goulet has since been released from the Canadian Forces because he was clearly unsuitable for service. Regarding his actions that are the subject of this Court Martial, ex-Private Goulet admitted that what he had done had been wrong and that he regretted having betrayed the trust of his friend and former colleague to satisfy his drug addiction. In his opinion, Private Thibault was not angry with him or, at the very least, was no longer angry with him. Over the last few

months, ex-Private Goulet has been working as a handyman for a construction company in the Québec region. He should shortly be able to take a workplace health and safety course allowing him access to construction sites. He aspires to become a carpenter, starting out as an apprentice. His new employer claims to be very satisfied with his services and describes ex-Private Goulet as punctual and hardworking. This is in contrast to ex-Private Goulet's conduct sheet, which abounds with convictions for absences without leave. Ex-Private Goulet obviously seems to have taken a positive turn over the last few months, not only because of his new work but also by devoting himself to his favourite sport, ice hockey, in the Mauricie senior hockey league. Some months ago, ex-Private Goulet agreed to return to live with his mother in Beauport, until such time as he is ready to stand on his own two feet again. He believes that he is on the right path to resolving his drug problem on his own. However, he admits that, a mere few weeks ago, he took drugs on one occasion, with people he claims are his friends, after they had offered him some even though he had apparently been sober for nearly two months. One may seriously question the value of such friendships when friends offer someone drugs knowing that the person is trying to rehabilitate himself or herself. It is a shame that ex-Private Goulet does not seem to realize yet how important it is that he make some major changes to break away from such relationships and be able to establish a new social network, if he truly wants to free himself from his drug addiction. Agreeing to get help from drug addiction professionals is certainly a step in the right direction.

[7] There is no denying that ex-Private Goulet's situation is extremely precarious and that he is a 23-year-old man who is in a very fragile state. To begin with, yesterday, he seemed to think that he could overcome his drug-related difficulties by himself, by sheer willpower alone. With respect, this is a naive approach, and he has not come close to satisfying the Court that he can do it alone and has the tools to succeed at this point. As his relapse in the last few weeks showed, he should seek all the help he can get and thereby put all the odds in his favour, including confiding in those who are closest to him and who would lend him their support and understanding. In the context of this case, the filing of the agreement this morning was crucial to the Court's agreeing to adopt counsel's joint suggestion.

[8] Ex-Private Goulet's mother described how her son's drug use has had disastrous consequences for him. She had thought that ex-Private Goulet would never be sucked into the underworld of drugs after having witnessed himself the misery that they inflicted on another family member some years earlier; how this happened is beyond her comprehension. Her son's drug use seems to coincide with his time in the Canadian Forces, during which he had been unhappy, in her opinion. In fact, she had mistakenly believed that her son had left the Canadian Forces on his own initiative. Today, she said—or, rather, yesterday, she said that she was heartened to see her son happy again because of his new job in construction and the rekindling of his passion for hockey. She testified that her son works hard and that he goes to bed and gets up early. In her opinion, he is now sober. She stated that she is confident that he would venture to confide in her if he were ever to start using again, but, in the same breath, she admitted that her son could relapse without telling her. Ex-Private Goulet's mother believes her

son when he tells her that he is done with duping everyone. To her, he seems to be a happy young man who now wants to live with his family. Indeed, ex-Private Goulet is godfather to a newborn child in their family. She testified candidly, and there is no question that her love for her son is unconditional. It is also just as clear that she is deeply committed and ready to support him in his efforts to overcome his demons and to help him to become a responsible young adult. Ex-Private Goulet should be able to find further motivation therein to continue bravely, determinedly and humbly on his new path. I hope that he realizes how lucky he is to be able to count on someone who has such faith in him.

[9] Imposing a sentence is the most difficult task for a judge. In *R. v. Généreux*,¹ the Supreme Court of Canada held that, “[t]o 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, be it civilian or military, 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.

[10] When determining a sentence that is appropriate to the accused for the wrongful acts committed and the offences of which he or she is guilty, certain objectives are considered with regard to the applicable sentencing principles, which nevertheless vary slightly from one case to the next. The Court reviewed counsel’s joint submission in light of all of the evidence presented during the sentencing part of the hearing, including the summary of the circumstances surrounding the commission of the offences, in accordance with the applicable sentencing principles. These principles include the objectives and principles set out in sections 718, 718.1 and 718.2 of the *Criminal Code* wherever they are consistent with the following considerations:

first, the mandatory requirements for maintaining a disciplined, operational and effective armed force; and,

second, the sentencing rules set out in the *National Defence Act*.

[11] The fundamental purpose of sentencing in a Court Martial is to build respect for the law and maintain military discipline by imposing fair sanctions having one or more of the following objectives:

- a. to denounce unlawful conduct;
- b. to deter the offender and other persons from committing offences;

¹ [1992] 1 S.C.R. 259.

- c. to separate offenders from society, where necessary;
- d. to assist in rehabilitating offenders to return to their environment in the Canadian Forces or civilian life; and
- e. to promote a sense of responsibility in military members who are offenders.

[12] The sentence must also take into consideration the following principles. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence should also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Before considering depriving an offender of liberty, the Court has a duty to consider whether less restrictive sanctions may be appropriate in the circumstances. Last, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and to account for any indirect consequence of the verdict or the sentence on the offender.

[13] In the context of offences under section 116 of the *National Defence Act* and section 430 of the *Criminal Code*, there should not be any leniency unless the offender clearly and unequivocally expresses sincere remorse and makes full restitution to the victims. In the case of public mischief or an act to the prejudice of good order and discipline, for having caused a police investigation to be launched so as to hide a crime or cast suspicion on someone else, the sentence will be decidedly severe if the person has a criminal record for offences related to the administration of justice and if the offence had been carefully planned out.

[14] In this case, the Court considers the following circumstances to be aggravating:

- a. Ex-Private Goulet took advantage of one of his peers' trust to divest him of his property by selling it to a pawn shop to pay for drugs without concern for the harm he was causing to a colleague and friend from the same battalion. This situation also created tension between the two men and is harmful in a military environment, where there must be absolute trust between fellow soldiers.
- b. Ex-Private Goulet deliberately chose to commit other crimes to hide or disguise the improper sale of property, by damaging the door to his own room to make it appear as though a theft had occurred and by filing a complaint with the military police so that an investigation into the incident would be launched.
- c. This is not the offender's first run-in with military justice, as revealed by his military conduct sheet.

[15] The Court considers the following circumstances to have a mitigating effect on the sentence:

- a. Ex-Private Goulet pleaded guilty, after indicating that he would plead guilty to the charges at the earliest opportunity, without attempting to negotiate. This clearly demonstrates that the offender accepts full responsibility in this matter. His testimony also shows that he is sincere in his regret and realizes that he has betrayed the trust of a colleague who had wanted to help him because he considered him to be a friend.
- b. Ex-Private Goulet was released from the Canadian Forces prior to this Court Martial for reasons—namely, a serious cocaine addiction—that, according to the evidence, contributed to the commission of the offences.
- c. The offender's family and financial situation was a factor. Ex-Private Goulet seems to be on the right path, but his situation is extremely precarious. Fortunately, he has the unconditional support of his family, in particular, his mother. Ex-Private Goulet, the Court hopes that you will realize to what extent you are at a crossroads. It is up to you now to take the necessary measures to get out of the hole you have dug for yourself and humbly recognize that you will not succeed alone.
- d. You have a new employer who seems to be extremely satisfied with your services and who believes in you. Obviously, you have proved yourself to be hardworking, diligent and dedicated, but it is also true that this employer was aware of your problems and chose to give you a chance to start over on the right foot by trusting you with relatively well-paid work.
- e. You paid your colleague \$800 for the loss of his computer, as you agreed to do, even though the actual loss, that is, the amount paid to buy back the computer that you had improperly sold to a pawn shop, was \$160.

[16] The Court agrees that the parties' joint submission contributes to the objectives of general and specific deterrence, denunciation of the behaviour and punishment of the offender. It also allows the offender to continue on his way to becoming a responsible young adult participating in civilian society. The release of a member of the Canadian Forces prior to a Court Martial does not render certain sentences set out in section 139 of the *National Defence Act* moot. If that were the case, Parliament would have mentioned it expressly. It is reasonable to believe that certain sentences may be found to be inadequate whenever the offender has already been released from the Canadian Forces. However, these sentences are not inadequate in and of themselves. They are relevant if they pursue valid and justifiable objectives under the circumstances. Some may claim that a severe reprimand is pointless in the case of an offender who has already been released from the Canadian Forces prior to the trial. With respect, such an approach fails to take into account the objective that the severe reprimand achieves in

the balancing exercise that is the determination of a just and appropriate sentence. In this case, the severe reprimand is meant to achieve the objectives of general deterrence and denunciation of the behaviour, to make members of the Canadian Forces understand that this type of offence is harmful to military discipline because it undermines the mutual trust that must exist between members of a military force. The objectives of individual or specific deterrence, and the punishment and rehabilitation of the offender are achieved through the substantial financial costs that the offender will have to bear for the offences committed.

[17] Ex-Private Goulet, stand up.

For these reasons, the Court

[18] **FINDS** you guilty of the second, third and fourth counts;

[19] **UPHOLDS** the stay of proceedings regarding the first and fifth counts;

AND

[20] **SENTENCES** ex-Private Goulet to a severe reprimand and a \$1000 fine. The Court is prepared, if the parties agree, for the \$1000 to be spread out over 10 months, in instalments of \$100 per month and payable by certified cheque to the address to be provided by the Director Military Prosecutions.

Counsel:

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Counsel for Her Majesty the Queen

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Counsel for ex-Private A.M.T. Goulet