



COURT MARTIAL

Citation: *R. v. Faucher*, 2010 CM 1010

Date: 20100426

Docket: 201009

Standing Court Martial

Valcartier Garrison
Courcelette, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal S.M. Faucher, offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCING

(Orally)

[1] Corporal Faucher, since the Court has accepted and recorded your plea of guilty on the first charge, an offence punishable under section 130 of the *National Defence Act* and contrary to paragraph 104(1)(a) of the *Criminal Code*, that is, of having attempted to import firearms, prohibited devices or any prohibited ammunition without authorization, and your plea of guilty on the third charge, an offence contrary to paragraph 125(a) of the *National Defence Act*, that is, of having wilfully made a false statement in a document signed by you and required for official purposes, the Court now finds you guilty of those charges. The prosecution previously withdrew the second and fourth charges.

[2] It is now my duty to determine the sentence that must be imposed in this case. Counsel in attendance have presented a joint submission to the Court regarding the sentence that this Court should impose. Counsel are recommending that this Court sentence you to 10 days' detention and a \$2000 fine payable in four equal monthly

instalments beginning today. Despite this joint submission, it must 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 only do so if it has compelling reasons to disregard that recommendation. Therefore, the judge should accept the joint submission from counsel 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.

[3] Imposing a sentence is the most difficult task for a judge. In *R. v. Généreux*, 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.” The Supreme Court emphasized that in the particular context of military justice, “[b]reaches 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.

[4] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed in relation to offences of which he or she is guilty, certain objectives must be aimed for in light of the principles applicable to sentencing, though they vary slightly from one case to the next. The Court has considered the joint submission by counsel in light of all 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 principles that are applicable to sentencing. These include the objectives and principles set out at sections 718, 718.1 and 718.2 of the *Criminal Code* wherever they are consistent with the following considerations: on one hand, the mandatory requirements for maintaining a disciplined, operational and effective armed force and, on the other hand, the sentencing rules set out in the *National Defence Act*.

[5] The Court also took into consideration any indirect consequence of the finding or the sentence on the offender. Last, the Court examined these various factors in light of the arguments of counsel.

[6] The facts surrounding this case may be summarized as follows. Corporal Faucher has been a Canadian Forces member since 10 August 2004. He is an infantryman. At the time of the events, he was a member of the 3rd Battalion of the Royal 22^e Régiment in Valcartier. On 28 July 2007, Master Corporal Leclerc, then clerk of the orderly room at Nathan Smith Camp (CNS) in Afghanistan on rotation 4, informed the camp’s military police platoon that he had just discovered a number of foreign firearms while rewrapping a non-compliant postal parcel addressed to Corporal Faucher. The customs declaration affixed to the parcel indicated that the parcel

belonged to Corporal Faucher, who was sending it to his home in Canada. Corporal Faucher had already left Afghanistan upon completing his tour. The task of rewrapping the non-compliant parcel was given to Master Corporal Leclerc who, in the presence of a witness, opened the parcel in the CNS Orderly Room. In the parcel, he discovered an AK-47 assault rifle and a metal box. Inside the metal box, he found a TOKAREV semi-automatic pistol and a MAKAROV semi-automatic pistol with a magazine containing a cartridge. The parcel also contained a jacket, identified with Corporal Faucher's name, rolled around the assault rifle. Furthermore, when the military police called to the orderly room continued the search of the parcel, they discovered eight cartridges of various calibres, identified as prohibited ammunition, and two magazines for the AK-47 assault rifle, in addition to numerous other items. The customs form accompanying the parcel, which indicated that the parcel belonged to Corporal Faucher, also had the following written on it: "Vase" and "Military Kit (Clothes)". That declaration did not indicate that there were any firearms, and no vase was found among the objects in the parcel. In the winter of 2007–2008, in Valcartier, Corporal Faucher had a conversation with Corporal Larochelle, a member of his section. During that discussion, Corporal Faucher admitted that while he was deployed to Afghanistan, he had sent himself a parcel containing, among other things, his military jacket and a firearm. He explained to Corporal Larochelle that he still had not received the parcel and hoped to never receive it. On 21 January 2008, Corporal Faucher signed an official military document, entitled miscellaneous loss report (QOA 24-6), in which he declared the following facts: [TRANSLATION] "I forgot my jacket in Afghanistan. I left it on a bed and I forgot to bring it back with me. I accept responsibility for this loss." He wilfully signed the declaration, knowing that the information provided was false. With regard to the weapons, the ballistic expert's report revealed that all of the weapons and devices seized were functional.

[7] In the context of military justice, the objectives and principles of sentencing are generally the following:

first, the protection of the public, which includes the Canadian Forces;

second, the punishment and denunciation of the offender;

third, the deterrence of the offender and anyone else from committing the same offences;

fourth, the rehabilitation and reform of the offender;

fifth, the proportionality to the seriousness of the offences and the degree of responsibility of the offender;

sixth, parity in sentencing;

seventh, the imposition of a custodial sentence that is warranted only where the Court is satisfied that it is necessary as a last resort; and

last, the Court will take into account aggravating and mitigating circumstances relating to the circumstances of the case and the offender's situation.

[8] The Court believes that the following factors either mitigate or aggravate the sentence. It considers the following to be aggravating:

First, the objective seriousness of the offences committed by the offender. Every person who imports firearms or the other prohibited items described at section 104 of the *Criminal Code* without authorization is liable to imprisonment for a term not exceeding five years, while every person who wilfully makes a false statement in a document signed by that person and required for official purposes under section 125 of the *National Defence Act* is liable to imprisonment for a term of three years. These are relatively serious offences.

Second, the subjective seriousness of the offences in relation to the context in which they were committed. You used your position as a military member on active duty in an operational theatre to take prohibited weapons and devices, including pistols and an AK-47 automatic weapon, as well as magazines and some ammunition. Although the actions of which you are accused sprang from your desire to import those weapons from Afghanistan without authorization to bring them back as souvenirs and trophies, as opposed to importing them with a future criminal intent, the fact remains that you knew that those actions were thoroughly unacceptable, as you yourself testified during your testimony earlier this morning.

Third, the planning of your actions. While you were in Afghanistan, you carefully chose to send prohibited weapons by mail by sending a self-addressed parcel and filling out a customs declaration form on the pretext that you were sending a vase and a jacket to Canada, all the while knowing that your parcel contained prohibited weapons and that you had no authorization to send it. Those actions are the polar opposite of the description by Warrant Officer Caron in a letter of reference filed with the Court in mitigation: [TRANSLATION] "Corporal Faucher was an extremely trustworthy and mature person who could be relied on. He paid good attention to orders and was able to make judicious decisions." If the Court agrees to consider that your actions were a grave error in judgment, as suggested by counsel in attendance, it must be noted that the warrant officer was careful to use the imperfect rather than the present tense in his letter when describing your characteristics.

Fourth, the fact that this is not your first encounter with the military justice system, even though your previous offence was minor and of a different nature from the offence in this case.

[9] The Court considers that the following factors mitigate the sentence:

First, the fact that you acknowledged having committed the offences of which you were accused and accepted full responsibility for them.

Second, the Court's finding that your actions were the product of a grave error of judgment and not of an offence committed in preparation for potentially committing other offences.

Third, the fact that your performance evaluations until now show that you are ordinarily a trustworthy, honest, respectful and loyal non-commissioned member whose performance in Afghanistan exceeded the standard. Your superiors also recognize that you have the potential to progress to higher ranks over the course of your military career.

Fourth, the Court acknowledges that your financial and family situations are stable and that you and your spouse are awaiting the arrival of your first child in the very near future.

And fifth, the fact this is an isolated incident and that there is little risk of your re-offending.

[10] Although there are few cases of military members importing prohibited firearms and prohibited devices for the purpose of bringing back souvenirs following involvement in a conflict, it is clear that such actions must be denounced and dealt with severely. There is no doubt that a sentence involving imprisonment is the minimum sentence in the context of this case to denounce the seriousness of the actions and emphasize the aspect of general and specific deterrence required in such situations. No combination of sentences could correctly satisfy the requirements necessary to maintain military discipline if they did not include a sentence of imprisonment. The joint submission of counsel is therefore the minimum sentence in the circumstances, even though it could have been more severe.

[11] For these reasons, the Court sentences Corporal Faucher to 10 days' detention and a \$2000 fine payable in four equal monthly instalments of \$500 beginning today. If the offender is released from the Canadian Forces before the fine imposed by the Court is paid in full, the balance of that fine will become payable immediately before the date of his release.

Counsel:

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

Major B.L.J. Tremblay, Directorate of Defence Counsel Services
Defence counsel for Corporal S.M. Faucher