



COURT MARTIAL

Citation: *R. v. Gray*, 2010 CM 1013

Date: 20100608

Docket: 201008

Standing Court Martial

15 Field Artillery Regiment
Vancouver, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Corporal N.T. Gray, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Bombardier Gray, having accepted and recorded a plea of guilty in respect of the first, second, third, fourth, and fifth charge, the court finds you guilty of these charges. It is now incumbent upon me to pass what will be a fair and fit sentence that will ensure the maintenance of military discipline. The charges before this court relate to a series of thefts committed over a period of two months where you made and cashed five cheques payable to yourself from the 15th Field Artillery Regiment Junior Ranks Mess chequing account. The totality of the money stolen from your mess account amounts to \$3,450.

[2] It has been long recognized that the purpose of a separate military justice system is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency and morale of the military. It is also recognized that the military context may, in appropriate circumstances, justify and, at times, require a sentence that will be more severe than if the same conduct involved a civilian in the criminal courts. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] The circumstances surrounding the commission of the offences reveal that on 16 January 2009 Master Bombardier Kurtagic went to the orderly room at 15 Field Artillery Regiment and opened an envelope that was in the 15 Field Artillery Regiment Junior Ranks Mess inbox. He noticed two cheques in the envelope that had been cashed then returned by the Bank of Montreal located on Broadway Street in Vancouver; this was the unit Junior Ranks Mess chequing account. The two cheques were made payable to Nicholas Gray and had only been signed by one person. Those first two cheques were in the amount of \$800 and \$650 respectively. Only Master Bombardier Kurtagic and Bombardier Dyke had signing authority to approve payments by cheques from the unit Junior Ranks Mess chequing account, and these cheques were normally signed by at least two persons for security measures. Master Bombardier Kurtagic had some doubts as to the validity of those two cheques and went to the locked filing cabinet where the cheques were secured. He noticed that three other cheques were missing from the Junior Ranks cheque book. Upon further inquiry, Master Bombardier Kurtagic then learned that three other cheques had been cashed by the bank payable to Bombardier Gray; the three cheques were of the amounts of \$1,200, \$500, and \$300 respectively.

[4] The police investigation later revealed that the five cheques in question were deposited and cashed by Bombardier Gray in his Toronto Dominion bank account in the following fashion:

- A. on 12 October 2008 a cheque in the amount of \$1,200 deposited in a TD Branch in Vancouver;
- B. on 1 November 2008 a cheque in the amount of \$500 deposited in an ATM located in Abbotsford;
- C. on 12 November 2008 a cheque in the amount \$300 deposited in an ATM located in Aldergrove;
- D. on 9 December 2008 a cheque in the amount of \$650 deposited in an ATM located in Abbotsford; and
- E. on 22 December 2008 a cheque in the amount of \$800 deposited in an ATM machine located in Abbotsford.

None of these cheques had been approved by anyone having signing authority with the Junior Ranks Mess committee. At the time of these offences the offender was the treasurer of the Junior Ranks Mess. In that capacity, he was in possession of the key that gave access to the secured filing cabinet where these cheques were, of course, secured. It is also relevant to know that at all relevant times Bombardier Gray was employed at the unit on Class B Reserve service.

[5] The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives: the protection of the public, and it includes the interest of the Canadian Forces; the denunciation of the unlawful conduct;

and the deterrent effect of the punishment not only on the offender but also upon others who might be tempted to commit such offences; and, the reformation and rehabilitation of the offender.

[6] The sentence must also take into consideration the following principles: the sentence must be commensurate with the gravity of the offence, the previous character of the offender, and his or her degree of responsibility. The sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. In other words, punishments in the form of incarceration should be used as a last resort. Finally, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[7] In addition to the circumstances surrounding the commission of the offences, I have considered the documentary evidence filed before the court and the testimony of Bombardier Gray. Finally, I have taken into account the direct and indirect consequences that the findings and sentence will have on you.

[8] The prosecution recommends that a proper and fit sentence should emphasize the need for general and specific deterrence. Counsel for the prosecution suggests that a sentence that would be composed of a reduction in rank and a fine in the amount of \$1,000 or similarly of a severe reprimand and a fine between \$2,000 and \$3,000 would be a fit and proper sentence that would achieve military discipline. Counsel for the defence suggested a similar range of sentences, except that a fine should not exceed \$2,000 and be payable over a period of 8 to 10 monthly instalments.

[9] The core values that are highlighted by this case are loyalty, honesty, and integrity. The actions of Bombardier Gray constitute one of the worst examples of a breach of trust in the military; that is, stealing from your very own comrades in taking money from your mess. These cases shall not only promote the need for deterrence, they should also denounce the conduct and the offender; however, the sentence should not impede with your rehabilitation. This sentence will reflect the need to emphasize the said objectives and principles.

[10] There are very few mitigating factors in this case, except for the plea of guilty to all charges, which the court considers to be a full acceptance of responsibility for the impugned misconduct. The court considers that the absence of a criminal record and conduct sheet, as well as the undertaking to make a promissory note to reimburse his unit with the money that was not recovered by the bank, i.e., \$500, also serves to mitigate the sentence. Finally, the court acknowledges that the offender has the only source of income in his household as his common law spouse is a student. He is a relatively young man at 26 years old.

[11] These mitigating aspects are clearly outweighed by the aggravating factors present in the case at bar:

First, the objective gravity of the offence under s. 114 of the *National Defence Act* carries a maximum punishment of seven years in these circumstances;

Second, the circumstances of the offence or rather the offences demonstrate a very serious breach of trust; stealing the money from your own mess account is equivalent to stealing from your own comrades directly from their pockets. It is even more serious when we add the fact that you were the treasurer of the Mess committee when these offences were committed, where you were responsible to manage and keep a detailed record of all Mess financial account. In other words, it is the classic example of the fox in charge of the henhouse. The court fully understands the rationale behind the unit authority's decision not to send you to combat in Afghanistan where every member must have an absolute and blind faith and trust amongst all members of the unit. During your testimony you seemed to victimize yourself for this lost opportunity; however, you recognized that it was totally understandable as to why your comrades treated you like a *persona non grata* after they had discovered what happened to their mess funds. They did not want to be with you anymore. You may have decided not to participate in unit activities as a result of their behaviour, but it seems that their conduct was simply an immediate reaction to your own breach of trust;

A third aggravating factor is the repetition of the offence and the facts that your actions were planned and deliberate. I note, however, that your methods were somewhat simplistic and unsophisticated; and

Finally, I consider to be aggravating the fact that your actions were committed for your own selfish financial interests without regard for others and the significance of the amount stolen; that is, \$3,450.

[12] I consider neutral that you did not make any reimbursement of the amount stolen to date and that the recovery of the sum of \$2,950 is only attributable to the initiative of your own bank. The court acknowledged your intent to reimburse the missing \$500, but this alone does not have the same mitigating weight that if the total amount had already been reimbursed at your own initiative.

[13] The case law provided to the court clearly indicates that the case at bar must send a clear message that stealing from your fellow mess members in taking money in the mess account for personal purposes cannot be tolerated. To be more precise, the sentence will reflect that stealing from your comrades has a significant stigma and the consequences will be present for some time on your new criminal record. This case illustrates one of the situations contemplated by the late-Chief Justice of Canada, Chief Justice Lamer in *R. v. Généreux*¹, where an offence committed in a military context may be punished more severely than if committed by a civilian in similar circumstances.

[14] Therefore, this court sentences you to a severe reprimand and a fine in the amount of \$2,001 payable over 10 equal monthly instalments. The first instalment shall

¹ [1992] 1 S.C.R. 259.

be made on 10 June 2010 in the amount of \$201, whereas the nine other instalments shall be in the amount of \$200 respectively.

[15] The payments shall be made by certified cheque to the Receiver General for Canada at the address that will be provided by the prosecutor to your counsel. Finally, should you be released from the Canadian Forces prior to the full payment of the fine the balance will be payable immediately on the date of your release.

Counsel:

Major B. McMahon, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major J.A.E. Charland, Directorate of Defence Counsel Services
Counsel for Corporal N.T. Gray