



COURT MARTIAL

Citation: *R. v. Champion-Wright*, 2010 CM 1015

Date: 20100817

Docket: 201006

Standing Court Martial

Canadian Forces Base Area Support Unit Edmonton
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

ex-Private J.E.Campion-Wright, Offender

Before: Colonel M. Dutil, CMJ

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Yesterday, ex-Private Champion-Wright entered pleas of guilty to the first charge, an offence punishable under section 130 of the *National Defence Act*; that is to say, unauthorized possession of a prohibited weapon, to wit brass knuckles. He also entered pleas of guilty to the third and fifth charges for offences under section 86 of the *National Defence Act*, fighting with a person subject to the Code of Service Discipline.

[2] The court accepted and recorded the pleas of guilty and directed that the proceedings with regard to the second and fourth charges be stayed. The court now finds you guilty of the first, the third and the fifth charge. The prosecution had previously withdrawn the sixth and remaining charge which was laid under section 97 of the *National Defence Act* for the offence of drunkenness. The offences took place on 14 August 2009, and ex-Private Champion-Wright was released from the Canadian Forces in

March 2010 and that, less than two years after his enrolment. It is now incumbent upon the court to determine what shall be an appropriate, fair and just sentence. However, the sentence imposed by the court shall constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] 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; 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.

[4] 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.

Background

[5] The facts surrounding the commission of the offences reveal that ex-Private Champion-Wright was a member of the Regular Force who was posted to Land Forces Western Area Training Command in Wainwright, Alberta, at the time of the incident that led to the charges before the court.

[6] On 14 August 2009, Privates Goodwill and Shaw were at the junior rank's mess at CFB Wainwright where Private Champion-Wright was also in attendance. At approximately 2230 hours, Private Goodwill offered to do a shot of alcohol with Private Champion-Wright. When Private Goodwill asked the bartender for the drinks, she refused to serve any alcohol to Private Champion-Wright because she judged that he had already had too much to drink.

[7] Shortly after, Private Goodwill observed Private Champion-Wright arguing with the duty staff at the junior rank's mess who had asked Private Champion-Wright to leave because he was making a scene.

[8] Private Goodwill approached Private Champion-Wright and offered to walk him back to the shacks. After a brief argument, Private Champion-Wright agreed and the pair left the mess.

[9] After leaving the mess, Private Campion-Wright began to argue with Private Goodwill. Private Goodwill put his arm around Private Campion-Wright encouraging him to walk in the direction of the accommodations. Private Campion-Wright resisted Goodwill's efforts and tried to walk back to the mess. While Private Goodwill was physically struggling to walk Private Campion-Wright back to the shacks, the offender pushed Private Goodwill to the ground, causing Private Goodwill to scrape his elbow.

[10] Two military police persons arrived at the scene and observed Private Campion-Wright and Private Goodwill struggling. The military police persons began talking to Private Campion-Wright who insisted that he be allowed to return to the mess. The military police persons permitted Private Goodwill to leave and he returned to the mess and joined Private Shaw.

[11] A short time later, Goodwill and Shaw decided to leave the mess. Upon exiting they observed Gaudreau and Martin, the military police, with Private Campion-Wright. Private Shaw approached the MP and asked that he be permitted to walk Private Campion-Wright back to the shacks. Sergeant Gaudreau agreed and then the military police members entered in their vehicle and followed the group of privates on their way back to their accommodations.

[12] Private Shaw accompanied Private Campion-Wright to the entrance of their accommodations where Private Campion-Wright again attempted to leave. Shaw physically held Private Campion-Wright back telling him that he was done for the night and that he should go to bed. The offender then punched Private Shaw in the face with his fist. At that time, Private Shaw called the military police over and they placed Private Campion-Wright under arrest.

[13] Corporal Martin, a member of the military police, conducted a search incident to arrest of the offender. During that search, Private Campion-Wright told the police that he had metal knuckles in his pocket. Corporal Martin located the metal knuckles which were in Private Campion-Wright's rear left pant pocket and seized them. The metal knuckles, commonly known as "brass knuckles," consist of a band of metal with finger holes designed to fit over the fingers of the hand. Private Campion-Wright had no license under which he could possess such prohibited weapon.

[14] In addition to the administrative documents filed during the sentencing hearing, the court heard the testimonies of Mr Campion-Wright, the offender, and Mrs Briscoe, the offender's mother. The evidence was completed by a series of letters that provide context to the decision of the chain of command to release Mr Campion-Wright. At the outset, it is abundantly clear that the short stay of Mr Campion-Wright in the Canadian Forces was not a success story. He joined the Canadian Forces in December 2008 as an infantryman at the age of 20 years old after graduating from high school a year earlier. Mr Campion-Wright commenced his recruit training in January 2009 in Saint-Jean. During his basic training, he was charged and found guilty at a summary trial for two distinct conduct related incidents. Upon qualification, he was transferred to the Land Forces Western Area Training Centre at Canadian Forces Base Wain-

wright to commence his Basic Military Qualification course in May 2009. He quickly earned a poor reputation that was fostered by his poor performance, conduct deficiencies and a severe misuse of alcohol as well as a propensity to initiate confrontation with fellow soldiers. It is on that basis that the offender found himself in trouble on 14 August 2009 for the incident that led to the charges before the court. Unfortunately, his behaviour did not improve as a result. On 30 September 2009, he was found guilty at a summary trial of the offence of drunkenness for an incident that took place one week earlier and for failure to comply with conditions imposed on him on 1 September 2009, to refrain from the consumption of alcohol. On 23 September 2009, Mr Campion-Wright failed again to comply with conditions imposed on him that same day to refrain from consuming alcohol as he was found in three local bars in Wainwright. On 2 October 2009, he was issued with a formal warning for misuse of alcohol and ordered to report to the MIR accordingly. On 5 October 2009, Mr Campion-Wright received an assessment from Mr Woodsworth, the addiction counsellor. On 29 October 2009, the offender was convicted at summary trial for the events of 23 September 2009. He was sentenced to detention for a period of 21 days and a fine of \$500. The offender was released from the detention barracks after serving his sentence on 18 November 2009. The chain of command commenced the release procedures under item 5(f) shortly after concluding that Mr Campion-Wright could not be advantageously employable in the Canadian Forces. The offender was released on 23 March 2010. Mr Campion-Wright now resides with his mother and stepfather near Chase, British Columbia where he assists them on the family ranch.

[15] It is abundantly clear that the excessive use of alcohol was the key ingredient to the offender's conduct deficiencies during his employment as a member of the Canadian Forces. It is equally clear that the sentence of detention imposed on him in October 2009 triggered a change of attitude and sense of responsibility. On 13 December 2009, this statement was provided to the chain of command, in support of the offender's retention in the Canadian Forces, by a corporal—and the following documents that I will quote extensively from are attached or were filed as Exhibit 8.

[16] On 13 December 2009, as I said, Corporal Wyatt stated:

"I'm writing this character reference in support of Private Campion-Wright for retention in the Canadian Forces. I reside in building 626 with Campion-Wright and I have witnessed many of the disciplinary issues that he has had in the past which have led to this point in his career. I know very little of Private Campion-Wright and his time off duty so I would like to write solely on his professionalism in uniform and conduct while on duty. In the last few months Private Campion-Wright has corrected many of his faults which included excessive alcohol abuse, instigating confrontations amongst fellow soldiers and poor deportment. Upon return from detention barracks, I have seen great improvement in Private Campion-Wright; he has broken up fights amongst our peers while using clear thinking and reasoning. He was able to handle the situation showing great self-control and an ability to separate himself from the sit-

uation to avoid getting hostile himself. Private Campion-Wright has also increased his standard in kit in quarters to earn comments from the OC, which I believe shows an increase in personal effort, ability, and pride, of all which the Canadian Forces look for in recruits. At the time of this statement, Private Campion-Wright has been given the responsibility to monitor A wing in building 626. His responsibilities include making sure everyone is awake and present for roll call, ensuring station jobs are done, as well as other small tasks. Private Campion-Wright upon receiving this duty immediately came to me for aid and I was able to assist him in making an updated station job list for A wing. The above mentioned are all qualities and responsibilities that prior to his corrective training and disciplinary action, Private Campion-Wright would not have been able to either complete or achieve. I do believe that Private Campion-Wright has had difficulty in transitioning to the military ethos. However, I also believe he is now ready to embrace the military ethos whole heartedly."

[17] On 11 December 2009, his roommate made the following remarks as part of the same process — and I am still quoting from Exhibit 8. This letter was addressed on 11 December 2009, by Corporal Grey, and he stated in part:

"I have known Private Campion-Wright as a good friend and fellow soldier of 1 Platoon of WATC Wainwright for approximately six months now. I am currently his roommate at the building 626, A328. Before I became friends with Private Campion-Wright, I always thought that he was 'pump' because he got in trouble often and had a compulsive need to go out and drink all the time, which resulted him to be charged and put in cells. After numerous corrective training and many meetings the WO and NCO's, he has finally decided to turn his life around and came to the realisation that all he wants in life is to become a soldier in the Canadian Forces and to make it his long term career. Private Campion-Wright has taken many steps to becoming a better person in general and a role model in the Canadian Forces. He has attended many appointments to the addiction counsellor, taking precautionary steps on going to bars outside the base or on base. When Private Campion-Wright decides to go out with his friends, he doesn't drink, at most have a soda, he goes out for the enjoyment of friendship and companionship of his friends making sure they have a good time to keep a good eye on his fellow troops so they don't get in trouble. Private Campion-Wright has been doing as much as he can to help out around here in building 626 and on base, whether it's helping another soldier or running errands for the sergeants. Being a corporal here on PAT, would have to say that Private Campion-Wright has reached the standards, and would call him a role model to anyone else around him. In the last couple of inspections we have had here on PAT, our OC and CSM have made numerous remarks and compliments on Private Campion-Wright for he was one of few soldiers here that are

up to par on kit, dress and deportment. Which has made him strive to do better and better. I would like to see Private Campion-Wright to stay in the Canadian Forces. I think he would make a valuable asset to the CF and would make a top soldier, because I can see Private Campion-Wright making the right choices now and improving himself as being a top notch infantryman. I would be more than glad to have someone like Private Campion-Wright by my side in any and all situations."

[18] As part of the same package, on 11 January 2010, Private Campion-Wright, of course, wrote a letter stating his objections with regard to the intent of his unit to recommend his release. In a nutshell, he stated that he had turned his life around since the disciplinary actions that had been taken against him and after serving 21 days in detention.

[19] On 20 January 2010, Major Nolan, OC TSC, wrote to the CO and recommended the release of Mr Campion-Wright. And I will quote from this letter dated 20 January 2010. It stated in part:

"Private Campion-Wright is recommended for release from the Canadian Forces in accordance with reference A under item 5(f). This recommendation is based on his previous below standard conduct, deficiencies, disciplinary action and the repeated misuse of alcohol. These actions have significantly impacted his ability to function as an infantryman and have made him not advantageously employable in the CF. Since returning from detention barracks in November 2009, Private Campion-Wright has not received any additional administrative action, has completed his Initial Counselling monitoring period without difficulties and has completed all assigned tasks. He has participated in daily physical fitness sessions and has completed assigned activities with a positive attitude. Currently, Private Campion-Wright is attached to the B Coy in order to provide enemy force and GD to the various courses. He has expressed a desire to complete NCM DP 1, Infantry training. Notwithstanding the improvements he has demonstrated, Private Campion-Wright's previous offences still represent significant difficulties with his conduct during off duty hours. Among his various charges are three counts of failing to comply with conditions of release and repeated drunkenness charges as indicated in reference B. Presently, he is awaiting court martial for six charges. Further, Private Campion-Wright did not respond well to conditions of release from military confinement; further indicating that he does not respond well to the structure and discipline associated with military service. In conclusion, it is my opinion that Private Campion-Wright will continue to experience difficulties adapting to a military lifestyle. Having been convicted under the *NDA* seven times, and still awaiting court martial for an additional six charges, all within a 12-month timeframe; he has not demonstrated to his chain of command that he can be a functioning and contributing member of the CF. Although there has been some improve-

ment in his attitude and performance over the last four weeks, it is not enough to re-establish the loss of trust I have in this soldier. It is still my opinion that if Private Campion-Wright is retained within the CF, his performance and conduct will likely slip and I consider it very likely that he will reoffend."

[20] It is based on that opinion that on 21 January 2010, the CO wrote to NDHQ, informing the release authority of the opinion of the chain of command regarding the status of Mr Campion-Wright as a member of the Canadian Forces. And I will quote briefly from a letter signed by Lieutenant-Colonel Morrison, dated 21 January 2010, at paragraph 2: "Although Private Campion-Wright's conduct has improved since his release from detention barracks in November, it is still the opinion of his chain of command that he should be released from the Canadian Forces. The gravity and the number of charges he has been convicted of, and those that are still pending, indicate that Private Campion-Wright does not possess the appropriate character traits for a member of the Canadian Forces." (My emphasis)

[21] Ex-Private Campion-Wright and Mrs Briscoe, the offender's mother, testified during the sentencing hearing. He testified that he doesn't have a clear recollection of the events that led to the charges as he was too drunk at the time. Although he remembers being arrested by the military police that night and telling them that he had brass knuckles in his pocket. Ex-Private Campion-Wright readily admitted his sole responsibility for these events and I accept his testimony as a genuine sign of remorse for his conduct that evening. The offender recognized that his behaviour, in particular the excessive consumption of alcohol, cost him not only his career, but the respect of his family and friends. There is no doubt that this young man has made significant steps in becoming a responsible and reliable young adult. He may have been bitterly disappointed by the decision of his chain of command to recommend his release, despite his sincere and significant efforts to amend himself and put his life in order after serving a period of detention in November 2009, nonetheless, he has since continued on the right path and this is largely corroborated by the testimony of his mother. They both testified candidly, honestly and convincingly. There is no doubt for the court that he has come a long way. He has shown that the prospect of rehabilitation is not only bright, but well grounded.

[22] Ex-Private Campion-Wright explained that he had acquired the brass knuckles in July 2009, further to an incident shortly prior to the events, where he and his friend were assaulted in a local bar in Wainwright. They were both highly intoxicated at the time. He said that he felt that he could use the prohibited weapon for his own protection if needed, because an investigation by the police did not provide with any result. The offender readily admitted that this reaction was irresponsible. Ex-Private Campion-Wright testified that he carried these brass knuckles for the first time on 14 August 2009, because he was planning to drink that night and go to local bars.

[23] With regard to the charges under section 86 of the *National Defence Act*, the essence of the events points to the excessive consumption of alcohol as the trigger of

these events. It is relevant to put in perspective the traditional and proper use of a charge for quarrels and disturbances. The Note to QR&O article 103.19 provides:

The offences in section 86 of the *National Defence Act* are prescribed so that those in authority will have a suitable means of suppressing quarrels or disturbances in circumstances in which they might have serious consequences. For example, a fight in a ship, in an aircraft, or in a place where explosive or valuable and delicate apparatus is situated, might produce extremely serious results. Charges should not be laid indiscriminately under this section for mere isolated squabbles.

Position of the Parties

[24] Counsel for the prosecution recommends that the court sentence the offender to a reprimand and a fine of \$2,000. She argued that such sentence would promote the need to emphasize general and specific deterrence, as well as the denunciation of the conduct. She submits that the aggravating factors in this case include the offender's conduct sheet, which contains a previous conviction for quarrels and disturbances related to the use of violence against others. She submits that the fact that the victims were service friends who were trying to help him stay out of trouble is also aggravating in the circumstances. The court agrees. In addition, she considers that the role of alcohol is an aggravating factor in this case. This position is difficult to reconcile with the prosecution's decision to withdraw the charge of drunkenness. She also submits that the offence of possession of a prohibited weapon is objectively serious and that CF members shall be held to a higher standard, because they are trained to handle weapons. In support of her recommendation, counsel for the prosecution provided the court with a book of authorities of previous court martial decisions. After review, each case included in that book of authorities can be distinguished on their own facts. The court found that they were marginally relevant and that they can not provide a meaningful range of sentences in the circumstances. With regard to a potential problem involving the possession or use of prohibited weapons at Canadian Forces Base Wainwright or in the Canadian Forces, counsel for the prosecution stated that this was not the case. Finally, she asks the court to issue an order under subsection 491 (1) of the *Criminal Code* and section 179 of the *National Defence Act* for the forfeiture of the brass knuckles seized by the Military Police.

[25] Counsel for the defence recommends a sentence of a fine in the range of 500 to 750 dollars payable at a rate of \$50 per month. He submits that there is no value to impose the punishment of a reprimand for a person who no longer serves in the Canadian Forces. Counsel for the defence concedes that the sentence may want to promote general deterrence and denunciation. However, he asserts that there is no evidence that the offences for which the offender has pleaded guilty are prevalent in the military community. Counsel for the defence finally submitted that the court does not have the authority to issue an order to forfeit the prohibited weapon as requested by the prosecution.

Decision

[26] The courts fails to understand how a sentence composed of a reprimand and a large fine would contribute to the respect of the law and the maintenance of military discipline in the circumstances of this case. I accept that offences involving the possession and use of prohibited weapons are objectively serious, but they are particularly serious when they occur during the commission of other criminal offences. However, the offence under subsection 91(2) of the *Criminal Code* for the unauthorized use of a prohibited weapon or restricted weapon is a hybrid offence. A person found guilty of that offence is liable to imprisonment for a term not exceeding five years only when charged for an indictable offence. Otherwise, a person can be guilty of an offence punishable on summary conviction that would make the offender liable to a fine of not more than five thousand dollars or to a term of imprisonment not exceeding six months or both. I disagree with counsel for the prosecution that an offence under subsection 91(2) of the *Code* is *per se* an objectively serious offence. Such statement is way to overbroad. The specific circumstances of the unauthorized possession, including the nature of the weapon and the context of the possession, are better indicators of the objective seriousness of the offence. The court recognizes that counsel for the prosecution does not have the option to proceed by way of summary conviction under the *National Defence Act*, but I would be very surprised that the circumstances of this case were so severe that she would have proceeded by indictment if she had had that option, especially in the context when the prosecution did not seek from this court an order under section 147.1 of the *National Defence Act* for a firearm or other weapons prohibition. With regard to the offences under section 86 of the *National Defence*, the facts of this case place them at the lower end of the spectrum for this type of offence.

[27] However, the subjective seriousness of this matter is important. The court finds that this case is one significant episode of the failure of a young service person who would not adapt to military life and basic discipline, including self discipline in the consumption of alcohol. This attitude finally changed after serving a substantial period of detention in November 2010 for breach of conditions imposed on him previously in relation to irresponsible consumption of alcohol. In other words, despite clear signals sent to him previously by his chain of command, as shown on his conduct sheet, it took a period of incarceration to wake him up. Unfortunately, the chain of command had lost the necessary trust in him and they recommended his release, despite his efforts to turn his life around. In this period of intense activities, the chain of command made a conscious decision that ex-Private Champion Wright's future in the Canadian Forces was highly compromised and that retention was no longer an option; and the court does not question that decision.

[28] Note A to QR&O article 104.09 rightly captures the essence of the punishment of detention. It states, in part:

(A) In keeping with its disciplinary nature, the punishment of detention seeks to rehabilitate service detainees, by re-instilling in them the habit of obedience in a structured, military setting, through a regime of training that emphasizes the institutional values and skills that distinguish the Ca-

nadian Forces member from other members of society. Specialized treatment and counselling programmes to deal with drug and alcohol dependencies and similar health problems will also be made available to those service detainees who require them....

Detention is a punishment of last resort. It is available only when other punishments or combination of punishments are not appropriate in the circumstances in the context of the scale of punishments under section 139 of the *National Defence Act*. In the case at bar, detention is the appropriate punishment that will contribute to the respect of the law and the maintenance of military discipline. In the circumstances, it would adequately recognize the paramount principles of general deterrence and the denunciation of the conduct for the offences committed on 14 August 2009. A reprimand and a fine are simply not adequate. The fact that the offender is no longer in the Canadian Forces and that he has turned his life around in becoming a responsible young adult does not make the punishment of detention less appropriate in the circumstances.

[29] Therefore, the court sentences you to detention for a period of 10 days as this punishment would have been the minimum punishment that would have been required if you would have been tried for these offences prior to your last summary trial and your subsequent release from the Canadian Forces, despite significant mitigating factors that include your young age, your release from the Canadian Forces in March 2010, and your exemplary conduct since November 2009. However, these significant mitigating factors must also be used in determining whether it is in the interests of military justice that you serve this sentence almost six months after your release from the Canadian Forces. As much as general deterrence and denunciation are paramount in this case, so is the rehabilitation of a young man who has decided to turn his life around after losing a promising career by his own fault. In these particular circumstances, the court concludes that it would not be in the interests of military justice to order you to physically serve the period of detention today. Accordingly, the Court suspends the carrying into effect of the period of detention.

[30] Finally, I will address the request made by the prosecution to issue an order for the forfeiture of the prohibited weapon under subsection 491(1) of the *Criminal Code* and section 179 of the *National Defence Act*. The Court has determined that Mr Champion-Wright has committed an offence the subject matter of which was a prohibited weapon, to wit brass knuckles, and that in particular relates to the first charge punishable under section 130 of the *National Defence Act* contrary to subsection 91(2) of the *Criminal Code*.

[31] Subsection 491 (1) of the *Criminal Code* does not create a discretionary power for a court to issue an order such as the one sought by the prosecution, unlike subsection 491(2) of the *Code*. Subsection 491(1) of that *Code* creates a scheme for the automatic forfeiture to Her Majesty of any prohibited weapon or other objects mentioned that have been seized and detained once a court has made the determination that falls within the ambit of paragraphs 491(1) (a) or (b). Therefore, it is automatically forfeited. Whether, this court could issue an order under subsection 491(2) of the *Code* pur-

suant to section 179 of the *National Defence Act*, does not have to be answered. Sub-section 491(1) applies. These were my last remarks concerning this matter.

[32] Mr. Campion-Wright, I trust that you will continue to grow up as an adult and that you will be successful in your future projects. The proceedings of this court martial are terminated.

Counsel:

Lieutenant-Commander S. Leonard, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major E. Thomas, Directorate of Defence Counsel Services
Counsel for ex-Private J.E.M. Campion-Wright