

Citation: *R. v. Ex-Private M. Tardif*, 2008 CM 3010

Docket: 2007-85

**STANDING COURT MARTIAL
CANADA
QUEBEC
VALCARTIER GARRISON**

Date: 24 April 2008

PRESIDING: LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

HER MAJESTY THE QUEEN

(Prosecutor)

v.

EX-PRIVATE v. TARDIF

(Offender)

SENTENCE

(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] Ex-Private Tardif, since the Court Martial has accepted and recorded your admission of guilt on the second count, the Court now finds you guilty of this count. With respect to the second count, it should be noted that counsel for the prosecution has decided to withdraw it, and the Court Martial consequently does not have to rule on that count because it was not before the Court.

[2] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of military activity. The purpose of this system is to prevent misconduct or, in a more positive way, see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusty and reliable manner, successful missions.

[3] As Major Jean-Bruno Cloutier states in his thesis entitled "L'utilisation de l'article 129 de la *Loi sur la défense nationale* dans le système de justice militaire canadien",

[TRANSLATION]

Ultimately, to maximize a mission's chances of success, the chain of command must be able to administer discipline in order to control

misconduct that endangers good order, military effectiveness and, finally, the *raison d'être* of the organization, national security.

[4] The military justice system also ensures that public order is maintained and ensures that persons charged under the Code of Service Discipline are punished in the same way as any other person living in Canada.

[5] It has long been acknowledged that the purpose of a separate system of military courts or of military justice is to permit the Canadian Forces to deal with matters relating to the Code of Service Discipline and the maintenance of the effectiveness and morale of the troops. That said, any punishment imposed by a court, whether military or civil, must be as lenient as possible in the circumstances. This principle is in accordance with the duty of the court to impose a punishment that is commensurate with the gravity of the offence and the previous character of the offender, as provided for in subparagraph 112.48(2)(b) of the *Queen's Regulations and Orders for the Canadian Forces*.

[6] In the present case, counsel for the prosecution and counsel for the defence made a joint suggestion concerning the principles of the sentence to be imposed. They recommended that the Court sentence you to a term of imprisonment. However, they differed concerning the term that this Court should impose on you. The prosecution suggested a term of 30 to 45 days, whereas your counsel submitted that a term of 21 days would better reflect the applicable sentencing principles. Furthermore, your counsel submitted to the Court that the exceptional circumstances of this case justified the Court's staying this sentence in order to emphasize the principle of rehabilitation.

[7] The Court Martial is not bound by this recommendation on the sentencing principle to apply. However, there is a long line of authority to the effect that only incontrovertible and convincing reasons could allow us to ignore this principle. It is also generally acknowledged that the Court should reject such a recommendation only where it would be contrary to the public interest to accept it and where this could have the effect of bringing the administration of justice into disrepute.

[8] The Court has taken into consideration the recommendations made by counsel in light of the relevant facts as they emerge from the summary of the circumstances and the testimony before this Court. It has also examined these recommendations in light of the principles of sentencing, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code* to the extent that they are not inconsistent with the sentencing scheme provided for in the *National Defence Act*. Those principles are as follows: first, protection of the public, and the public in this case includes the interests of the Canadian Forces; second, punishment of the offender; third, the deterrent effect of the sentence, not only for the offender but also for any person who might be tempted to commit such offences; and fourth, the rehabilitation of the offender

and reintegration of the offender into society. The Court also took account of the arguments made by counsel, as well as of the case law they filed and the documents they introduced in evidence.

[9] The Court agrees that the need to protect the public requires a sentence that stresses the principles of denunciation and general deterrence. It is important to note that the latter principle requires that the sentence not only deter the offender from reoffending but also deter any other person in a similar situation from engaging in the same unlawful acts.

[10] In this case, the Court is dealing with an offence of possession of methamphetamine for the purpose of trafficking. This is a very serious offence in the circumstances, but the Court intends to impose what it considers to be the minimum applicable sentence.

[11] In order fully to understand the seriousness and the gravity of an offence of this nature, it is important to quote the reasons expressed by the Court Martial Appeal Court in *MacEachern v. J.*, 4 C.M.A.R. 447, in which Justice Addy stated:

Because of the particularly important and perilous tasks which the military may at any time, on short notice, be called upon to perform and because of the team work required in carrying out those tasks, which frequently involve the employment of highly technical and potentially dangerous instruments and weapons, there can be no doubt that military authorities are fully justified in attaching very great importance to the total elimination of the presence of and the use of any drugs in all military establishments or formations and aboard all naval vessels or aircraft. Their concern and interest in seeing that no member of the forces uses or distributes drugs and in ultimately eliminating their use, may be more pressing than that of civilian authorities.

[12] In order to arrive at what it believes is a fair and appropriate sentence, the Court has also taken into account the following aggravating factors and mitigating factors.

[13] The Court considers the following to be aggravating factors:

a. First, the objective seriousness of the offence. You have been found guilty of an offence under section 130 of the *National Defence Act* of possession of a substance for the purpose of trafficking, contrary to subsection 5(2) of the *Controlled Drugs and Substances Act*. This offence involves imprisonment for a term not exceeding ten years or a lesser sentence. This is an offence that is objectively very serious;

b. Second, the subjective seriousness of the offence. The nature of the drug, methamphetamine, and the fact that it was supplied at a National Defence establishment to service personnel are highly aggravating factors in themselves. Despite the fact that you knew very well that it was completely prohibited to make the drug available in these circumstances, as you had been informed when you enlisted, you did not hesitate to act as you did. You displayed recklessness and a complete lack of judgment in the circumstances. Furthermore, given your age and your previous experience with the Reserve Force, you were required to set an example, which you completely failed to do;

c. Third, the existence of a conduct sheet. Even though the offences listed there are not of the same kind as or similar to the one before this Court today, the fact remains that this clearly indicates the lack of respect you showed for military discipline and your difficulty in complying with the simplest instructions. Essentially, this clearly indicates that some months after you enlisted in the Canadian Forces, you had no intention of making the necessary efforts to comply with the ethical duties that govern all members of the Canadian Forces: integrity, loyalty, courage, honesty, fairness and responsibility. Even though it seems completely contradictory, you did everything you could to show that you were not cut out for the military world and had enlisted simply because you wished to make a career there; and

d. Fourth, the fact that your action was premeditated to a certain extent. Indeed, you deliberately took steps to obtain the drug for a specific purpose. However, you never effected the transfer because you never met with the girls who were to take delivery of the drug.

[14] The Court considers the following to be mitigating factors :

a. By your plea of guilty, you clearly indicated your remorse and the sincerity of your intention to continue to be a very sound asset in Canadian society. Moreover, you expressed a certain amount of regret in Court in your testimony to the same effect. The Court would not wish in any way to compromise your chances of success, because rehabilitation is always a key element in the sentencing of an offender;

b. The fact that the trafficking was done as a favour, not for profit, involved only a small amount of the drug and resulted in no harmful consequences. The primary purpose of obtaining this drug was to impress girls at parties off the base and not to meet your own needs or those of other service personnel. Moreover, you did not supply it to

anyone, according to the evidence. However, you decided to show your peers how strong and capable you were by showing them the drug;

c. The lack of premeditation relating to the action that you perpetrated in respect of your peers, and your co-operation with the authorities responsible for investigating this case. It appears fairly clearly from the circumstances surrounding the commission of the offence that you spontaneously announced that the drug was available and that once again you did not really think about the consequences of your actions;

d. The fact that you have had to face this Court Martial in the presence of several of your peers has certainly had a very substantial deterrent effect on you and on them. The message is that this kind of conduct in this kind of work environment will not be tolerated in any way and that it will be punished accordingly. In the context of the evidence heard by this Court, it remains satisfied that you should not appear before another court for an offence of the same kind in the future;

e. Subparagraph 12.48(2)(a) of the QR&O requires the Court to take into account the indirect consequences that its sentence will have on you. Your military career came to an abrupt end because of the commission of an offence of this kind, combined with all the other offences in your conduct sheet, to the point where your career was subject to administrative review and the Canadian Forces terminated it by discharging you on the ground of 5(f) because you were considered unfit to continue your military service. This is a mitigating factor that must be considered;

f. The fact that you took certain actions in order to return to the correct path. You first of all attempted to make something of your life by going out to the West to make a new start. It is clear, however, that the death of your father and the lack of support from those around you, especially the members of your family, did not help you to stay the course. However, that was already a concrete action on your part in order to move in the right direction;

g. The meeting with Nathalie Tremblay was an important turning point in your life. Chance would have it that she became pregnant following your encounters, and this provided a wake-up call to give concrete form to your good intentions. Until you met her, despite the fact that you had the best intentions in the world, you had not taken very many concrete steps. Consequently, you decided to look for work in Québec and later in Montréal in order to improve your lot in the labour force. You then decided to take a course in vehicle bodywork in Montréal and finally

decided to move to the same city with your partner so that your new family could begin in a much more positive environment. It is clear to the Court that these were concrete actions designed to restart your life in a more positive way; and

h. Your efforts to overcome your addiction to alcohol and, to a lesser extent, drugs. It is clear that you were never a habitual drug user. However, you clearly told the Court, which has no reason to doubt your testimony in this regard, that you have completely stopped taking drugs. As far as alcohol is concerned, you acknowledged that it was a major problem and that you have taken steps in order to control it. However, attention must be paid to this throughout your life, and it would be appropriate for you to consider measures to prevent any relapse in this regard. I must inform you that the drinking of one or two beers at the seventh game in the series involving the Montréal Canadiens was not at all reassuring. It is not certain that if your life brings you another hard knock, which I certainly do not wish on you, you will not be tempted to turn again to alcohol. The Court has no means of imposing any control measure whatsoever on you, and I can only encourage you to take the necessary steps to control this problem, which does not appear to have been a problem for some time now.

[15] The Court feels that the joint suggestion concerning the sentencing principle to be applied by this Court is not unreasonable in the circumstances. Consequently, the Court accepts counsel's recommendation that you be sentenced to a term of imprisonment since this is not contrary to the public interest and will not have the effect of bringing the administration of justice into disrepute. However, it is the task of the Court to determine the number of days, since the recommendations made by counsel differ in this respect.

[16] Having considered the applicable principles and all the aggravating factors and mitigating factors, the Court is of the view that, in the circumstances, a term of 30 days' imprisonment is the minimum applicable sentence in the circumstances.

[17] As regards a stay of the sentence of imprisonment, the Court had to determine whether the offender had shown that there were exceptional circumstances that would warrant such a measure.

[18] Ex-Private Tardif, it is clear that it took a number of hard knocks in life to shake you out of your characteristic disregard for your duty to make a positive contribution to the society in which you live. It is clear that you have only just grasped the importance of behaving responsibly in society. However, you have not yet understood all the implications thereof. For example, the fact that ownership of a car requires a driver to comply with the signage, which you failed to do in a period of only

months after having your driver's licence restored and acquiring a vehicle thanks to the generosity and financial support of your partner.

[19] However, now that you have a spouse, Ms. Tremblay, and a child on the way, the personal and family obligations that derive from that relationship have forced you to some extent recently to accept some responsibility, which you appear to have done with seriousness. The steps to find employment, the employment that you have only just begun, the fact that you have registered at a vehicle bodywork school to improve your lot in the labour force, your plans to start a family in the best possible conditions by moving to a place that will allow you to be close to your spouse and your child while continuing to work and go to school and the fact that you wish to take concrete actions to pay off your accumulated debts are concrete facts that show the Court on a balance of probabilities that you intend to rehabilitate yourself within Canadian society. Furthermore, I must add that in the exceptional circumstances of this case, it has been shown that if you served a term of imprisonment, this would create an imbalance between the sentencing principles of denunciation and rehabilitation because you would lose your job. This would then undermine all your other actions with respect to your rehabilitation. The Court is of the opinion that there are exceptional circumstances that justify a suspended sentence of imprisonment.

[20] Ex-Private Tardif, the Court is not giving you another chance to prove something today. You and your spouse have established sufficiently that at the present time you are personally changing your attitude with respect to your involvement and your responsibilities in this society by establishing a family. You have asked the Court to trust you and to allow you to continue the steps that are now making you a positive asset to this society. The Court will accordingly trust you in this regard because it does not wish to threaten your chances of rehabilitation and encourages you to continue all the actions on which you have already embarked. Moreover, the things you have to prove must be proved first to your partner and later to yourself.

[21] I have also considered the question as to whether it is appropriate in this case to make an order prohibiting the offender from possessing a firearm, as I am required to do under section 147.1 of the *National Defence Act*. In my judgment, such an order is neither desirable nor necessary to protect the safety of others or the offender in the circumstances of this trial and I will not make any order to that effect.

[22] A fair and equitable sentence should take into account the seriousness of the offence and the responsibility of the offender in the specific context of the case. Ex-Private Tardif, stand up. The Court therefore sentences you to imprisonment for a term of 30 days. However, since you have established on a balance of probabilities that exceptional circumstances exist in this case, the Court will stay execution of the sentence of 30 days' imprisonment it has imposed on you. The Court makes no order under section 147.1 of the *National Defence Act*.

[23] The proceedings in the matter of the Standing Court Martial of Ex-Private Tardif are now concluded.

LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

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