Citation:*R. v. Corporal M.T. Reansbury,* 2004CM56

Docket:S200456

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE PETAWAWA

Date:23 September 2004

PRESIDING:COLONEL K.S. CARTER, M.J.

HER MAJESTY THE QUEEN
v.
CORPORAL M.T. REANSBURY
(Accused)

FINDING
(Rendered orally)

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[1] Corporal Reansbury, the court having accepted and recorded your plea of guilty to the second and the third charges on the charge sheet, the court now finds you guilty of those charges. The court has already found you not guilty on charges number one and four.

[2] Queen's Regulations and Orders 112.48 requires that this court take into account not only the nature of the offence but also the background; that is, the previous character of the convicted person and any direct or indirect consequences of any sentence it imposes on the offender.

[3] I will, therefore, begin with a consideration of what the evidence discloses. The evidence before the court in this matter consists of the documentary evidence introduced by the prosecution and the defence in sentencing, including the Statement of Circumstances. The evidence discloses you are a military policeman, 25 years old, single, earning a salary of approximately $50,000 a year and with no identified financial problems at this time.

[4] You completed a two year police studies course at Mohawk College and in July 2001, joined the Canadian Forces as a Corporal in the specialist trade of Military Police.

[5] After basic training and language training in St-Jean, you went to the Military Police Academy for approximately nine months on your QL training as a military police person. In July 2002, you were posted to the Military Police in Petawawa. Approximately six to eight months later, you were involved in the activities outlined in the second charge on this charge sheet.

[6] On 3 May 2004, this charge sheet was signed. On 4 May 2004, you were posted to 3 RCR where you continued to work in what appears to be a military police capacity from a review of Exhibit 7. It is not, however, before the court whether you retained your Military Police credentials at this time.

[7] The court has spent some time considering the fact that you may well face other significant administrative consequences. Although not raised directly by either counsel, as a result of the provisions of article 15 of the Military Rules of Evidence, the court can properly consider the provisions of QR&O 22.04, which outlines that violation of the Military Police Code of Conduct can lead to a review of and in some cases, removal of credentials thereby effectively ending an individual's military police if not their military career.

[8] In determining an appropriate sentence, the court has considered not only your background and these current circumstances but also the gravity of the offences; the circumstances surrounding the commission of the offences; the submissions of counsel and the principles of sentencing.

[9] The court must and does follow certain principles in determining what is an appropriate sentence. These principles are applied not only in courts martial but also in criminal trials in Canada. They incorporate protection of the public which includes not only the general public and its interests but also the interests of the Canadian Forces, punishment of the offender, deterrence; both general and specific, and reformation and rehabilitation.

[10] In the context of a court martial, the primary interest is the maintenance or restoration of discipline which is a fundamental requirement of any military force and a prerequisite for operational efficiency.

[11] Discipline has been described as a willing and prompt obedience to lawful orders, which is of fundamental importance not only for the success of a mission but for the safety and well-being of other Canadian Forces members. And discipline in its final analysis, is founded on personal choice; that is, on self-discipline.

[12] I've mentioned punishment, and that is, quite simply, a consequence that society imposes for a breach of its laws, it is denunciation by society for misconduct. General deterrence is a principle that the sentence imposed should deter not only the

offender from re-offending but also others in a similar situation. And specific deterrence means that the sentence should deter you from re-offending not just from committing the same offence or similar offences again but from committing any offences again.

[13] Reform and rehabilitation are of vital importance, and this is because, ultimately, society is only protected through an individual reforming and rehabilitating him or herself and like discipline, it is an individual choice.

[14] The court has considered the submissions of the prosecution and would comment on some of them. In relation to the reference to the case of *R. v. Généreux*, the court has considered the quote that has been brought to its attention, and in essence, that quote indicates that offences may be much more serious in a military context than a civilian context, and as a consequence, may warrant more significant punishment. The examples, however, that are used are offences such as stealing or assault, which also have military counterparts and the particular reference refers to stealing that occurs in quarters, which can be much more serious than a simple theft, and also an assault, which involves striking a superior, which is a much more serious offence, as well.

[15] Here, the offences of what you have been convicted can only be committed by, essentially, military people or, at the very least, people who are attempting to join the military. There are no civilian offence analogies. And so, the court has, from that perspective, decided that the particular quote in *Généreux* is not appropriate and applicable in this matter.

[16] The court has, however, considered that, in at least one of these cases, the section 129 charge, that there is a somewhat analogous civilian situation; that is, it is an offence under the *Controlled Drugs and Substances Act* to try and obtain an anabolic steroid other than through legitimate mechanisms from a medical practitioner. So, the idea of trying to obtain anabolic steroids other than in an appropriate fashion is in a more limited way, a civilian offence, but very simply, the court does not accept there should be any higher punishment here simply because this has been committed by a military person in a military context.

[17] The prosecution has stressed two aggravating factors; first, that this occurred between two Canadian Forces members and; secondly, the fact that you are a military police member and therefore, you are held to a higher standard, to a code of conduct.

[18] In terms of mitigating factors, the prosecution has indicated, you have no record; that there are other potential consequences, which I've gone through in more detail and the suggested punishment was a fine of $2000 which the prosecution believes would meet both the requirement of general and specific deterrence.

[19] Your defence counsel went into some detail with regard to your background and also stressed that you would like, if you have the opportunity, to stay with the military and with the military police. He agreed that the fact that you're a military policeman made both of the offences, more serious. However, he took issue with the view of the prosecution that the section 129 charge was inherently more serious because of the involvement of another Canadian Forces member, Leading Seaman Grass. The court has considered very, very carefully and read over the Statement of Circumstances in that regard and the court will indicate that for a number of reasons, the Statement of Circumstances indicates that, perhaps, this is not the most serious situation that involves another CF member.

[20] Your defence counsel stressed in mitigation your age, the other consequences that may occur, very significantly from his point of view that you chose not to proceed in this matter, and also the fact that the subsequent assessment of Sergeant Galway indicates that you are continuing to be a productive member of the Canadian Forces at this time, and he recommended a fine of 750 to 1200 dollars.

[21] The court has looked at the offences, the section 122 offence which is, in essence, providing false information on enrolment, the court considers the less serious for a number of reasons. The most serious aspect of that is the integrity issue and that is, that you lied for whatever reason. However, the consequences of that false information is not something that made you, from the court's understanding, completely unsuitable for the Canadian Forces; that is, you were not lying about something that would have precluded you joining the Canadian Forces. And secondly, the drug that is indicated you were lying about is not of the most serious nature.

[22] The section 129 offence, the court considers is much more serious and it would indicate, it does consider as an aggravating factor that you are a member of the military police. It has—as it's indicated—looked very carefully at the Statement of Circumstances and there has been an argument that the impact on the other Canadian Forces member was very adverse. The facts before the court, quite frankly, are ambiguous in that regard. This appears to have happened in a social context, according to the Statement of Circumstances, it is between two work colleagues; that is, it is not a discrepancy in rank, that is, in essence, as portrayed on the facts, you were co-workers and friends. And, there is no indication clearly here, that there was an adverse impact on the other party. There was no clear denunciation nor any indication that that person was put in a difficult position as a result of this.

[23] The court, however, does consider two other aspects, which are aggravating. The first is, clearly this was planned, it occurred over a period of time and you took a number of steps. And secondly, the court has a concern that the substance involved was an anabolic steroid. The Canadian Forces requires trained people and then they arm those trained people. Certainly, as a member of the military police, you have

at least the same exposure to firearms as any other member and in many cases, more of an exposure. The potential consequences to the Canadian Forces, in terms of unpredictability, in terms of potential increase in aggressiveness as a result of using these kinds of products is a very significant risk. It's one that neither the military nor the police can afford to take. So, the court has considered not the adverse impact in terms of the other members of the Canadian Forces but the potential adverse impact on the Canadian Forces as an aggravating factor.

[24] The court accepts as mitigating factors, first of all, your plea of guilty, which it sees as a continuation of your acceptance of responsibility. The fact that you do not have a record and also the fact that, as your counsel has stressed and as is indicated in the Statement of Circumstances, this was not, in fact, a plan that was carried through. I would say that if you had been convicted of the first offence on the charge sheet or of actual use of these substances, the court would be looking at a much more serious punishment.

[25] So, the court has considered whether or not a fine is sufficient and the court feels, in large part because of your status as a member of the military police, that that is not sufficient in this case. In addition, as I've indicated, there is the nature of the substance that you were seeking to obtain.

[26] The court believes that a reprimand and a fine together will serve general deterrence and it accepts that it is general deterrence that is the important thing here. The fact that this did not get carried through; the fact of your acceptance of responsibility and a guilty plea convinces the court that specific deterrence is no longer a requirement.

[27] The court will therefore impose a sentence of a reprimand and $1000 fine.

COLONEL K.S. CARTER, M.J.

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