



COURT MARTIAL

Citation: *R. v. Rideout*, 2010 CM 3006

Date: 20100423

Docket: 201018

Standing Court Martial

Canadian Forces Base Gagetown
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Private B.L.A. Rideout, Offender

Before: Lieutenant-Colonel L-V d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Private Rideout, having accepted and recorded a plea of guilty in respect of the first, third, fourth, fifth, and sixth charges, the court finds you now guilty of these charges. Consequently, the court directs that the proceedings be stayed on the second charge.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the sentence.

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of the 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. It also ensures that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It has been long recognized that the purpose of a separate system of military justice, or tribunals, is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to "impose a sentence commensurate with the gravity of the offences and the previous character of the offender" as stated at QR&O article 112.48(2)(b).

[5] Here, in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence to be imposed by the court. They recommended that this court sentence you to dismissal from Her Majesty's service.

[6] Although this court is not bound by this joint recommendation, it is generally accepted, as mentioned by the Court Martial Appeal Court at paragraph 21 in its decision of *Private Taylor v. R.*, 2008 CMAC 1, quoting the decision of *R. v. Sinclair* at paragraph 17, that:

The sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[7] The court has considered the joint submission in light of the relevant facts set out in the statement of circumstances and their significance, and I have also considered the joint submission in light of the relevant sentencing principles, including those set out in sections 718, 718.1, and 718.2 of the *Criminal Code*, when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following:

Firstly, the protection of the public and the public includes the interests of the Canadian Forces;

Secondly, the punishment of the offender;

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

Fourthly, the reformation and rehabilitation of the offender;

Fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; and

Sixthly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

The court has also considered the representations made by counsel and the documentation introduced, including the agreed statement of facts.

[8] I must say that the protection of the public must be ensured by a sentence that would emphasize on the principle of denunciation and general deterrence. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from re-offending but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct.

[9] Here the court is dealing with four specific military offences; one for using violence against a superior officer, one for having resisted an escort whose duty it was to have you in charge while you were in custody, and two for absence without leave. The court is also dealing with one criminal offence, which is assault. Most of the offences involved some kind of violence and all these offences also refer to Canadian Forces principles, such as, respect the dignity of all persons and obey and support lawful authority. The lack of respect for dignity of persons by Canadian Forces' members, especially towards superiors, is a serious matter and may reflect on the trustworthy relationship and the reliability that must exist, at all times, among Armed Forces members when performing any mission. However, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

[10] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors.

[11] The court considers as aggravating the objective seriousness of the offences. The spectrum for maximum punishment for all of them goes from imprisonment for less than two years to imprisonment for life, or to less punishment.

[12] About the subjective seriousness of the offences, the court considered three things as aggravating factors:

- First, the violence you used to commit most of them. For you, expressing your disagreement with a situation or an opinion deserves to be done in only one way; physically challenging those who you disagree with. Fortunately, such things can not be tolerated in any place or situation, and more importantly when it may jeopardize the relationship between a superior and subordinate in the Canadian Forces;
- Second, is the absolute disrespect, and the failure abides the basics of military discipline despite the fact that you were twice arrested and released with conditions. The statement of circumstances, the synopsis prepared by Captain Mowat, and the agreed statement of facts show clearly that you do not intend to govern yourself in accordance with the principles and obligations for Canadian Forces' members. Basically, the Canadian Forces are a burden for you and you intend to continue to act as you have done unless you are released of you obligations as a soldier; and

- Third, you have been in the Canadian Forces for about a year and a half and you managed to generate an enormous amount of disciplinary and administrative problems, especially over the last six months. Instead of improving your situation, you made it worse despite the attention you got from your chain of command. Being at a learning stage about your trade at the Armour School, such behaviour disclosed a total lack of interest in becoming a valid asset for the Canadian Forces.

[13] The court considers that the following circumstances mitigate the sentence:

- Through the facts presented to this court, the court also considers that your plea of guilty is a clear genuine sign of remorse and that you are very sincere in your pursuit of staying a valid asset to the Canadian community. It disclosed the fact that you're taking full responsibility for what you did. Moreover, your cooperative attitude with the investigative authorities constitutes an additional sign of remorse that the court must consider;
- Your age and your career potential as a member of the Canadian Forces. Being 22 years old, you have many years ahead to contribute positively to the society in general;
- The fact that you did not have a conduct sheet or criminal record related to similar offences;
- The fact that you were put in pretrial custody for the last five days. It has some specific deterrence on you and may have limited general deterrence on others;
- The fact that you had to face this court martial. It has had already some deterrent effect on you and also on others; and
- The fact that you are facing a personal challenge by trying to go through some kind of depression for a long time. Without excusing your behaviour, it may explain some of the feelings you have about the Canadian Forces and your attitude towards authority.

[14] A sentence of dismissal is a very serious punishment. However, you are not listening to anyone anymore and you don't want to consider behaving in accordance with the rules of the Canadian Forces. Nobody knows, including yourself, when will be the next time you will use violence in order to express your frustration towards the authority.

[15] In consequence, the court will accept the joint submission made by counsel to sentence you to dismissal from Her Majesty's service, considering that it is not contrary to the public interest and would not bring the administration of justice into disrepute.

[16] After the court provided to counsel an opportunity to comment, it considered whether it was desirable, in the interests of the safety of the offender, the victims or any other person, to make an order prohibiting the offender from possessing any firearm. Considering violence was involved in the commission of the offences, the nature and circumstances of the commission of these offences, the offender's behaviour for the last six months, and his mental health condition, and the counsel's comments, it is the court's decision that such order is desirable and must apply to him in the course of his duty or employment with the Canadian Forces.

[17] Also, further to the application by the prosecution to make an order for the provision of samples for DNA analysis in accordance with subsection 196.14(3) of the *National Defence Act* for a secondary designated offence, the court is issuing such an order considering the nature of the offences and their circumstances surrounding their commission. The violence involved in the commission of some of the offences, combined with the actual mental issue, calls for such an order in the circumstances.

[18] Private Rideout, please stand up. Therefore, the court sentences you to dismissal from Her Majesty's service.

[19] Also, the court is issuing a prohibition order pursuant to section 147.1 of the *National Defence Act*. And this court also orders that you deliver to any officer or non-commissioned member appointed under the regulations for the purposes of section 156 of the *National Defence Act*, or to the person's commanding officer, all things the possession of which is prohibited by this order together with every authorization, licence, and registration certificate relating thereto and held by the offender, by you, on the commencement of this order.

[20] The court is also issuing an order authorizing the taking of bodily substances for forensic DNA analysis as it will appear from the court order attached to the decision. A prohibition order will be attached to the court decision on sentence. The prohibition order will take effect today and will last for a period of three years.

[21] The proceedings of this standing court martial in respect of Private Rideout are terminated.

Counsel:

Major J. Samson and Major P. Rawal, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major B. Tremblay, Directorate of Defence Counsel Services
Counsel for Private B.L.A. Rideout