Citation: *R. v. Master Warrant Officer J.-P. J. G. Pelletier,* 2009 CM 3005

Docket: 200864

STANDING COURT MARTIAL
AREA SUPPORT UNIT WAINWRIGHT
WAINWRIGHT GARRISON
WAINWRIGHT, ALBERTA

Date: 31 March 2009

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

HER MAJESTY THE QUEEN
v.
MASTER WARRANT OFFICER J.-P. J. G. PELLETIER
(Accused)

SENTENCE
(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] Master Warrant Officer Pelletier, the Court Martial having accepted and recorded your admission of guilt in respect of the second, third and fourth counts, the Court now finds you guilty of these counts. Accordingly, the Court directs a stay of proceedings on the first count, which is an alternative one to the second count, for which the Court has just accepted and recorded your admission of guilt.

[2] As the military judge presiding at this Standing Court Martial, it is my duty to determine the sentence.

[3] The military justice system constitutes the ultimate means to enforce discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in a more positive way, promote good conduct. It is through discipline that armed forces ensure that their members will perform their missions successfully, confidently and reliably.

[4] As stated by Major Jean-Bruno Cloutier in his thesis *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 enforce discipline in order to control misconduct that endangers good order, military effectiveness and, finally, the raison d'être of the organization, national security.

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

[6] 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 being said, the punishment imposed by any court, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances of each case. It also goes directly to the duty imposed on the Court to impose a sentence commensurate with the gravity of the offence and the previous character of the offender, as stated at paragraph 112.48(2)(*b*) of the QR&O.

[7] The Court has considered the respective submissions of counsel in light of the relevant facts presented at this trial and of their significance. It has also considered the submissions in light of the relevant sentencing principles, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code*, to the extent that those principles are not incompatible with sentencing provisions under the *National Defence Act*. Those principles are as follows: first, protection of the public, and in this case the public 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; fourth, separation, where necessary, of offenders from the rest of society, including members of the Canadian Forces; fifth, the imposition of sentences similar to those imposed on offenders for similar offences committed under similar circumstances; and sixth, the rehabilitation of the offender and reintegration of the offender into society. The Court has also considered the representations made by counsel, including the case law submitted, the witnesses heard and the documentation introduced.

[8] The Court agrees with counsel for the prosecution that the need to protect the public requires the imposition of a sentence that emphasizes first general deterrence, followed by denunciation and punishment of the offender. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct.

[9] Here, the Court is dealing with one offence of an act to the prejudice of good order and discipline for the unauthorized possession of the public property listed at Annex A of the charge sheet, and two offences of having used a vehicle of the Canadian Forces for an

unauthorized purpose. These are serious offences, but the Court will impose what it considers to be the minimum sentence applicable in the circumstances.

[10] In arriving at what it considers to be a fair and appropriate sentence, the Court has also considered the following aggravating and mitigating factors.

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

a. First, the objective seriousness of the offences. You have been found guilty of an offence under section 129 of the *National Defence Act* for an act to the prejudice of good order and discipline for having had public property in your possession without authorization. This offence is punishable by dismissal with disgrace from Her Majesty's service or less punishment. You have also been found guilty of two offences under paragraph 112(*a*) of the *National Defence Act* for having used two vehicles of the Canadian Forces for an unauthorized purpose. These two offences are punishable by imprisonment for less than two years or to less punishment. These are objectively serious offences.

b. Second, the subjective seriousness of the offences. It seems that, as senior ammunition technician with the rank of master warrant officer, you played a key role at the ammunition depot at Canadian Forces Base Wainwright. Your duties required unwavering honesty and integrity on your part, which you demonstrated in the past. The carelessness you showed in acting as you did had a major effect on the trust that had been put in you, by both your subordinates and your superiors.

c. The circumstances surrounding the commission of the offences reveal that the entire operation had been well planned and that there had therefore been a significant degree of premeditation. You had ample time to think about how you could abuse the trust your superiors had in you owing to your duties, in order to take property and use vehicles without authorization and for your own purposes.

d. It appears that the value of the property accumulated is significant and also constitutes under these circumstances an aggravating factor that the Court must take into account.

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

a. Your plea of guilty is clearly a sign of remorse and of your sincere intention to remain a valid asset to Canadian society.

b. The absence of a conduct sheet or criminal record for similar offences.

c. The fact that your conduct did not result in any tangible and adverse consequences for the operations of the Canadian Forces and units on the base.

d. The fact that you cooperated with military authorities from the moment your home was searched. You immediately realized the gravity of your actions and thus showed that you truly intended to rehabilitate yourself.

e. The remorse you have shown throughout this judicial process, be it during the search or through the letter of apology you wrote to your commanding officer.

f. Your exemplary career in the Canadian Forces. Apart from these unfortunate events, it seems clear to the Court that you have always performed well beyond your supervisors' expectations and that your experience and qualifications were valued and sought out. That is also probably why your colleagues were astonished, incredulous and somewhat stunned by the acts you have committed.

g. Your health problems. It is obvious to the Court that, although not an excuse, your physical and mental health problems, for which you were taking medication, combined with the pressures of your work environment and your desire to always perform well, are factors that shed some light on what might have led you to commit these acts, which, at first glance, seem foreign to your nature.

h. The fact that you had to face this court martial, which was announced and accessible to the public and which took place in the presence of some of your colleagues, has no doubt had a very significant deterrent effect on you and on them. The message is that the kind of conduct that you displayed will not be tolerated in any way and will be dealt with accordingly.

i. The delay in dealing with this case. The Court does not wish to blame anyone in this case, but, as counsel for the defence stated, a sentence's relevance and effectiveness in respect of the morale and cohesion of the members of the unit is proportional to the speed with which the discipline issue is resolved. The time elapsed since the incident occurred is one of the factors that makes it less appropriate to consider a more severe sentence carrying some deterrent effect. Nevertheless, it should be noted that 19 months have elapsed since the searches that led to the discovery of the accused's objects and conduct resulting in the current charges before this Court, and 12 months since the charges were laid. It appears that the case ran its course, without taking an inordinate amount of time to the point that the Court should attribute greater weight to this mitigating factor

than any other. In the opinion of the Court, it must be considered, but to the degree that is appropriate in the circumstances.

j. The fact that you have decided to rebuild your life in civilian society following your release from the Canadian Forces. This is an important factor that the Court must consider, as you were able to put these unfortunate events behind you in a way by finding a job in your field of expertise, allowing you to begin a new life on solid footing. The fact that you have stopped taking some of the medication you had been taking at the time of the incidents is also a step towards demonstrating your rehabilitation. I encourage you to continue in that direction.

[13] Counsel for the prosecution has suggested that the Court sentence the offender to 15 days' imprisonment, believing this to be the minimum punishment applicable in the circumstances. As for counsel for the defence representing the offender, she has indicated that any form of incarceration should be rejected by the Court since the circumstances do not demonstrate that it is a case of last resort. On the contrary, imposing a severe reprimand and a fine in the amount of $3,000 would serve the ends of justice in this case.

[14] Regarding the imposition of a sentence of imprisonment by this Court on Master Warrant Officer Pelletier, it was established through the Supreme Court of Canada's decision in *R. v. Gladue*, [1999] 1 S. C. R. 688, at paragraphs 38 and 40, that imprisonment should be the penal sanction of last resort. The Supreme Court noted that incarceration in the form of imprisonment is appropriate only where no other sanction or combination of sanctions is appropriate for the offence and the offender. This Court feels that these principles are relevant in the context of military justice, taking into account, nonetheless, the important differences between the sentencing rules that apply to a civilian court hearing a criminal or penal case and the rules that apply to a military court whose powers of punishment are set out in the *National Defence Act*.

[15] Moreover, this approach was reaffirmed by the Court Martial Appeal Court in *R. v. Baptista*, 2006 CMAC 1, at paragraphs 5 and 6, where it held that imprisonment should be imposed only as a last resort.

[16] The civilian criminal justice system has its own unique features, such as a conditional sentence, which differs from probationary measures but is nonetheless a genuine prison sentence, is applied according to different terms, and allows the offender to serve his or her custodial sentence in the community, where it is possible to combine the punitive and corrective objectives, as indicated by the Supreme Court in *Proulx*. The military justice system, however, has disciplinary tools such as detention, which seeks to rehabilitate service detainees and re-instill in them the habit of obedience in a military framework built around the values and skills unique to members of the Canadian Forces. Detention can have a significant effect in terms of denunciation and deterrence, while at the same time not stigmatizing service detainees to the same degree as members of the military who are sentenced to imprisonment, as stated in the Notes added to articles 104.04 and 104.09 of the QR&O.

[17] However, in the case of a member of the Canadian Forces who has already been released, the objectives of a sentence of detention are no longer relevant, and only the remaining form of incarceration specified in the scale of punishments, which is imprisonment, must be considered.

[18] In addition, when the act as charged goes beyond the disciplinary framework and constitutes a strictly criminal activity, it is necessary to examine the offence not only in light of the particular values and skills of members of the Canadian Forces, but also from the perspective of the exercise of concurrent criminal jurisdiction.

[19] In this case, the three offences for which the offender has pleaded guilty are purely disciplinary in nature. Alone, they cannot justify a sentence of incarceration. In fact, without denying the seriousness of the offences and their circumstances, they are confined to a limited period of time, and the Canadian Forces suffered only a temporary loss of property. The abuse of trust of which the offender stands accused is not as great as in cases of fraud or theft occurring under the same circumstances, which are offences normally dealt with from the perspective of the exercise of criminal jurisdiction. For these reasons, it therefore seems clear to this Court that incarceration in the form of imprisonment is not the only adequate sanction and that there is another sanction or combination of sanctions that is appropriate for the offences and the offender.

[20] Therefore, the Court considers that a sentence of imprisonment is not necessary to protect the public and maintain discipline.

[21] On the contrary, the Court is of the opinion that the suggestion of counsel for the defence constitutes the minimum necessary intervention that is adequate in the particular circumstances of this case.

[22] A fair and equitable sentence should take into account the seriousness of the offence and the offender's degree of responsibility in the particular circumstances of the case. Consequently, the Court is of the view that the imposition of a severe reprimand and a fine is in accordance with this principle in light of all the circumstances and the aggravating and mitigating factors identified by this Court.

[23] Master Warrant Officer Pelletier, stand up. The Court sentences you to a severe reprimand and a fine of $3,000. The fine is to be paid in consecutive monthly installments of $300 beginning on 1 April 2009, and continuing for the following nine months.

[24] The proceedings in the matter of the Standing Court Martial of Master Warrant Officer Pelletier are now concluded.

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

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