



COURT MARTIAL

Citation: *R. v. Baker*, 2010 CM 3009

Date: 20100506

Docket: 201016

Standing Court Martial

Royal Military College of Canada
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Officer Cadet J.O.B. Baker, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Officer Cadet Baker, having accepted and recorded a plea of guilty in respect of the first charge, the court now finds you guilty of this charge.

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

[3] The military justice system constitutes the ultimate mean to enforce discipline in the Canadian Forces, which is a fundamental element of the 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. 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 offence 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 a fine in the amount of \$200 in order to meet the justice requirements.

[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 *R. v. Taylor*, 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've 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 compatible 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 interest 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 counsels and the documentation introduced.

[8] I must say that the protection of the public must be ensured by a sentence that would emphasize on principles 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 reoffending but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct. I consider that rehabilitation must also be considered.

[9] Here, the court is dealing with a specific military offence which is an act to the prejudice of good order and discipline for having in your possession, without lawful excuse, 10 rounds of 5.56mm blank ammunition. This offence involves Canadian Forces principles such as obey and support lawful authority and rely on Canadian Forces ethic obligations such as integrity and responsibility. Your failure to properly manage ammunitions makes this offence a serious one. 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:

The court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with subsection 129(1) of the *National Defence Act* and it is punishable by dismissal with disgrace from Her Majesty's service or to less punishment.

[11] About the subjective seriousness of the offence, the court considered two things as aggravating factors:

First, the place where the offence occurred. You stored blank ammunition in an inappropriate place, without any specific reason, on a defence establishment. You decided to keep ammunition without any authority in a common storage room to which many people may have access, in a building located on the Royal Military College of Canada, an institution devoted essentially to the education and training of future officers of the Canadian Forces.

Second, is the total lack of judgment you disclosed for a person who must demonstrate some kind of leadership. You were achieving a specific goal, being regardless of the security of other and the rules you were infringing. At the time you made the decision to keep the 10 rounds with you, you consciously made the decision to disobey the law without giving consideration to the consequences. You totally failed to achieve what you were trained for as a military leader: making good and reliable decisions in order to accomplish any mission.

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

- a. 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 and the Canadian Forces. It disclosed the fact that you are taking full responsibility for what you did.
- b. Your age and your career potential as a member of the Canadian Forces. Being 19 years old, you have many, many years ahead to contribute positively to the Canadian Forces and the society in general.
- c. The fact that you did not have a conduct sheet or criminal record related to similar offences.
- d. The fact that you were put under arrest, you were detained for some time and that you were released with conditions that you respected at all time. It has some specific deterrence on you and may have limited general deterrence on others.
- e. The fact that it is an isolated incident, and that no such similar conduct occurred after the commission of the offence.
- f. The fact that you had to face this court martial. It has had already some deterrent effect on you and also on others.

[13] In consequence, the court will accept the joint submission made by counsels to sentence you to a fine, considering that it is not contrary to the public interest and would not bring the administration of justice into disrepute.

[14] Concerning the amount of the fine, which is \$200. The court considers that the amount suggested by both counsel would meet the required sentencing principles and objectives, such as parity on sentence, general deterrence, as well as maintaining discipline and confidence in the administration of military justice.

[15] Officer Cadet Baker, I had a close look at your performance. You are very smart, but you will have to work on your leadership abilities. In order to convince those who will be tasked with you, subordinates and superiors, in order to perform any mission, you will have to show that you are a trustworthy, responsible, and honest officer. This includes that you have to show that you have an excellent judgment. So far, it seems that you have a tendency to act in a disrespectful manner toward your peers and the law. Talk less, act better and you will see that people will start to listen to you for what you are as a person and not solely for the fact that you are knowledgeable. I am pretty sure that you learned some lessons from the incident that occurred in October 2009. You will get respect of people if you make good decisions. You know now what may come from bad decisions because you have been there. I wish you the best in your career and I hope that you will build on this in order to become an excellent leader.

[16] Officer Cadet Baker, please stand up. Therefore, the court sentences you to a fine in the amount \$200. The fine is to be paid in full immediately.

Counsel:

Captain E. Carrier, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major B. Tremblay, Directorate Defence Counsel Services
Counsel for Officer Cadet J.O.B. Baker