



COURT MARTIAL

Citation: *R. v. Gore*, 2010 CM 3010

Date: 20100510

Docket: 200958

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Corporal Gore J., Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Corporal Gore, having accepted and recorded a plea of guilty in respect of the first and only charge on the charge sheet, the court now finds you guilty of this 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 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 trusting 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 long been recognized that the purpose of a separate system of military justice or tribunal 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 the 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 paragraph 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 severe reprimand in order to meet justice requirements.

[6] Although this court is not bound by this joint recommendation, it is generally accepted that a court should not depart from it unless it has cogent reasons such as it 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 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 offence;

Fourthly, the reformation and the 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 reason in the same prohibited conduct. As stated by Judge Létourneau, at paragraph 22 of the Court Martial Appeal Court decision in *R. v. Private St.Jean*, CMAC 429:

... Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct....

[9] Here the court is dealing with a specific military offence in relation to documents which is to have wilfully indicated in a signed common-law partnership document that you met the conditions for that status while you knew you had not. This offence involves Canadian Forces ethic obligations such as honesty, integrity, and responsibility. The fact that you claimed something you were not entitled to get 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:

- a. The court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 125(a) of the *National Defence Act* for having wilfully made a false entry in a document signed by you that was required for an official purpose. This offence is punishable by a term of imprisonment for less than three years or to less punishment.
- b. About the subjective seriousness of the offence, the court considered the fact that you conscientiously filled and signed an official document while knowing that the statement about your common-law relationship did not meet the requirements. By doing so, you tried to get personal benefits you were not entitled to and you were careless about the consequences of your actions. The "catch me if you can" approach cannot be tolerated in an environment where Canadian Forces personnel is entitled to various benefits in order to compensate in some ways the military life's requirements. A trustworthy relationship among Canadian Forces members is essential at all time in order to accomplish any mission, and when one of them is showing untrustworthy behaviour, it constitutes a serious threat to the success of it.

[11] 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 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 31 years old, you have many years ahead to contribute positively to the Canadian Forces and the society in general. Also, the evidence put before this court indicates that your record of service is good and that you are progressing well in your trade and in your unit despite the fact that you are dealing with this disciplinary issue for some time.
- c. The fact that you did not have a conduct sheet or a criminal record related to similar offences.
- d. The fact that you made restitution to the Canadian Forces in one payment for the full amount involved in the commission of the offence.
- 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.
- g. Your post conduct since it was first discovered that you potentially committed an offence in February 2007. It took some time to the military justice system to get on track with the charge for which you were convicted today and you took advantage of this delay, which is about three years, to manage things in order to stay out of any trouble from a disciplinary point of view and to show that you learned from your mistakes. It is also true that you were at the beginning phase of your career in the military at the time of the offence and that you have probably now a better understanding of how you must act as a non commissioned member in the Canadian Forces.

[12] The court reiterates that a severe reprimand must be seen as a serious punishment in the military context. It is higher on the scale of punishment than a fine, whatever the amount of the fine. It reflects that there is some reason to have doubts about somebody's commitment at the time of the offence and it reflects consideration given to the seriousness of the offence committed, but it also means that there is good hope for rehabilitation.

[13] Also, this punishment will remain on your conduct sheet unless you get a pardon for the criminal record you are getting today. Reality is that your conviction today will carry out a consequence that is often overlooked, which is that you will now have a criminal record and it is not insignificant.

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

[15] Corporal Gore, please stand up. Therefore, the court sentences you to a severe reprimand.

Counsel:

Major V. Ohanessian, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander B.G. Walden, Directorate of Defence Counsel Services
Counsel for Corporal J. Gore