



COURT MARTIAL

Citation: *R. v. Halstead*, 2010 CM 3018

Date: 20100901

Docket: 201030

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal L.M. Halstead, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Halstead, having accepted and recorded a plea of guilty in respect of the first charge, the court finds you now guilty of this charge.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine 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 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 and reliable manner, successful missions. It also ensures that public order is maintained in 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 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 to the amount of \$2,000 in order to meet the justice requirements. Although this court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute, or be contrary to the public interest.

[6] 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 section 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:

- a. First, the protection of the public, and the public includes the interests of the Canadian Forces;
- b. Second, the punishment of the offender;
- c. Third, the deterrent effect of the punishment not only on the offender but also upon others who might be tempted to commit such offence;
- d. Forth, the reformation and rehabilitation of the offender;
- e. Fifth, the proportionality to the gravity of the offence and the degree of responsibility of the offender; and,
- f. Sixth, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[7] The court has also considered the representations made by counsel and the documentation introduced. 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 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.

[8] 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 a number of blank and live ammunition and different grenades, simulators, basically, pyrotechnic devices. This offence involves Canadian Forces' principles such as obey and support lawful authority, and relies on Canadian Forces' ethic obligations such as integrity and responsibility. Your failure to properly manage ammunition and pyrotechnic devices make this offence a serious one; however, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

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

[10] The court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 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 three things as aggravating factors:

- a. First is the danger represented by the ammunition, the quantity of ammunition, and the type of ammunition kept in your house. Basically, sometimes when somebody—because it has happened before me—some people will keep a couple of blank ammunition and they are still charged for this, which is a good thing. But the quantity is a very serious aggravating factor. You kept a lot, which is very unusual; it's more than keeping a souvenir in your house.
- b. The other thing is the type of ammunition; hand grenades, simulators, or trip flares contain substances which are very dangerous, especially—and it brings me to the second aggravating factor I consider—is the place for storing all those things. It is one thing, as a soldier, you know how it is dangerous. You are taught how to handle these ammunitions and pyrotechnic devices, and you know that there is a proper way to do this. You bring this at your home. You know in the Canadian Forces we keep that in a special place in order to avoid—for security reasons and because we don't want to have all people accessing this and playing with that. You brought this at your house. So I understand that from your perspective you probably had access to this, but it also means that others may have access to this, and other people that may come in your house, not having a clue how to handle this, and expose themselves to any kind of injury or any other thing. And I'm pretty sure that you didn't want to hurt anybody, but you didn't have on your mind how dangerous it could have been if somebody, not knowing how to

use this, would have played with that. So I think it's another very aggravating factor.

- c. The third aggravating for me is your rank. As a master corporal you should have known better. You know that master corporal is not a rank, it's an appointment. I think you know this very well. And if you get this appointment it's because among all those corporals in your unit, you're considered as having leadership skills. You're put in charge, or you are assisting supervisors most of the time in your trade. Now, because of your ability to lead people and take decisions, you were given this appointment. It's difficult to the court to reconcile the fact that you're wearing this appointment and that you kept all those things at your home. You should have, at some point, decided to bring back all those things knowing how dangerous it could have been for yourself and anybody else. Basically, for somebody having an appointment such as—or wearing an appointment such as master corporal it's a great lack of judgement you showed. You totally failed to achieve what you were trained for as a military leader in the Canadian Forces, making good and reliable decisions in order to accomplish any mission.

[12] The court also 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. And more than that, from the time you were—you basically faced, or you were told that it was not a good thing to have this in your house and the things were seized and you had to tell the story about this, you made the decision to admit what you did and didn't make it difficult at all. You confessed, and I think it's another mitigating factor to put on your side. Your full cooperation basically reflects today what you did, your guilty plea. So you took, at that time, or you considered that maybe you failed, but also that you did a wrong thing, and as a leader it is a good thing to recognize what you did good, but also what you did wrong.
- b. Your age and your career potential as a member of the Canadian Forces. If I am correct, you are 27 years old, you have many years ahead to contribute positively to the Canadian Forces and to the society in general.
- c. The fact that you did not have an entry on your conduct sheet related to similar offences. Despite the fact that you have a conduct sheet, the entry on it has no relation, as mentioned by your counsel, to the facts or to the kind of offence you are facing today.
- d. The fact that you had to face this court martial it has had already some deterrent effect on you and also on others. I know you came here by a special

way, you made the decision to go by summary trial, but because of the issue, the *Charter* hypothesis before the summary trial, your commanding officer made the decision to refer the matter to a court martial who would be able—who would be in a better position to deal with this matter. And, if I understand correctly from both counsel, the prosecutor and your defence counsel, it is something that you contemplated very recently, you made the decision to, and you changed your mind. But it means that, as you maybe know, it is something that probably a court martial is better equipped to deal with than a commanding officer, that's the reason why you ended here. The other thing is, as explained by the prosecutor, when the matter was preferred by the prosecution, they had to deal with the delay or the—the delay issue. Basically after one year after the alleged commission of the offence, it is impossible to bring back the matter to summary trial, so you had to face this court martial. And because of that it's open to the public. You have probably some of your colleagues sitting behind you, so it has a deterrent effect you now, that's why I'm saying probably on others who would be tempted to do the same thing.

- e. The fact that it is an isolated incident. If I understand clearly the circumstances, it is something that you took—you took all those things once with you at home. It is not something that you had—you kept once in a while, most of the things were brought at your home further to a medical incident in the field. You made the decision not to return the things, which was a wrong decision, but at least it's something isolated in the sense that it's not something that you did 20 times.
- f. And the last mitigating factor is the administrative measures taken by your chain of command. The fact that you were taken off the list for deployment and that you put—basically, you were put on hold for career courses is not a sentence by itself. However, the court has to consider this as a mitigating factor because the fact that those things happened may have some deterrent effect on you for what you did, but also passed a message to others that if they do something similar it's something that may happen. So the court has to consider this as a mitigating factor.

[10] In consequence, the court will accept the joint submission made by counsel to sentence you to a fine considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute. Concerning the amount of the fine, which is \$2,000, the court considers that the amount suggested by both counsel would meet the required sentencing principles and objectives such as parity in sentence, general deterrence, as well as maintaining discipline and confidence in the administration of military justice.

[11] Master Corporal Halstead, you still have a future in the Canadian Forces, and I hope you will learn from this incident. One of the things we used to say as leaders, is you have to lead by example. So starting today, I hope you will think twice before do-

ing something similar to this considering the appointment you are wearing and probably what you want to achieve in the Canadian Forces as a leader. You will be able now to put behind you all this story and carry on with your career in the Canadian Forces.

[12] Master Corporal Halstead, please stand up. Master Corporal Halstead, therefore, the court sentences you to a fine in the amount in the amount of \$2,000. The fine is to be paid in monthly instalments of \$200 commencing today, 1 September 2010, and continuing for the following nine months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable the day prior to your release.

The proceedings of this Standing Court Martial in respect of Master Corporal Halstead are terminated.

Counsel:

Captain Carrier, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Captain Collins/Lieutenant(N) Létourneau, Directorate of Defence Counsel Services
Counsel for Master Corporal Halstead