COURT MARTIAL

Citation: *R v Adams*, 2012 CM 2002

Date: 20120201
Docket: 201149

General Court Martial

Bay Street Armoury
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Petty Officer 2nd Class A.W. Adams, Offender

Before: Commander P.J. Lamont, M.J.

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the persons described in this judgment as the complainants shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

[1] Petty Officer 2nd Class Adams, in accordance with the findings of the panel of this General Court Martial, you have been found guilty, contrary to your pleas, on three charges, that is to say, two charges of sexual assault and one charge of drunkenness.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts of the case as disclosed in the evidence heard during the trial, and the other evidence and materials submitted during the course of the sentencing hearing, as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in each individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, of which of course the Canadian Forces is a part, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force. The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour. One or more of these objectives will inevitably predominate in crafting a fit sentence in an individual case, yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should reflect an appropriate blending of these goals, tailored to the particular circumstances of the case.

[5] Section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment. Only one sentence is imposed upon an offender whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[6] In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to pronounce.

[7] As to the facts of these offences, in the course of my instructions to the panel I summarized the evidence of the two complainants as follows:

> The witness Petty Officer 1st Class V.S. testified that she was a steward aboard HMCS VANCOUVER when the ship visited Pearl Harbour arriving 11 February 2011. After a social function for which she had some responsibilities she left the ship to go out to a dance bar, accompanied by Petty Officer 1st Class

> Bacon. At the bar she drank to the point of intoxication, and walked back to the ship with Petty Officer 1st Class Bacon. She then retired for the night to her rack in 6 mess after changing into night attire, sweat pants and a top. She awoke with someone on top of her between her legs pinning her down. She pushed the person away and saw that it was Petty Officer 2nd Class Adams, a shipmate, wearing only his boxer style briefs. She kicked him off her rack and he landed on the deck. At that point Petty Officer 2nd Class A.F.'s curtain opened and Petty Officer 2nd Class A.F. told Petty Officer 2nd Class Adams to get out. Petty Officer 1st Class V.S. got out of her rack and realized that her pyjama bottoms were not on. She found them and put them on, demanded of Petty Officer 2nd Class A.F. where Petty Officer 2nd Class Adams' mess was, and sought him out there. She found him apparently awake in his rack, and she kicked and punched him until her strength was gone. She was escorted away by the duty coxswain.
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> The witness Petty Officer 2nd class A.F. testified that after she retired to her rack in 6 mess, she was awoken around 0200 because someone was stroking her hair and upper arm to her elbow. She recognized Petty Officer 2nd Class Adams and told him in strong terms to get out because she was not drunk. From his lethargic movements and smell she supposed that he was intoxicated. She was starting to drift off to sleep again when she heard something from the area of Petty Officer 1st Class V.S.'s rack. She opened her curtain and saw Petty Officer 1st Class V.S. push Petty Officer 2nd Class Adams off her rack, and he fell to the deck. He was wearing underwear. He got to his feet and left. Petty Officer 1st Class V.S. was screaming "what the hell was that?" or "who was that?" Petty Officer 2nd Class A.F. went to awaken the duty coxswain, Petty Officer 1st Class Martin. Later she found Petty Officer 1st Class V.S. with Petty Officer 1st Class Bacon. She was very distraught and crying.

[8] It is clear from the findings of the panel that the evidence of the two complainants was accepted, and that the evidence of the offender to the effect that he and Petty Officer 1st Class V.S. engaged in consensual sexual activity did not raise a reasonable doubt with respect to what happened in 6 mess on the night in question.

[9] The prosecution has pointed to several factors that aggravate the seriousness of these offences. It is argued that the evidence supports a reasonable conclusion that after being rebuffed by Petty Officer 2nd Class A.F., the offender attempted to have sexual intercourse with a female shipmate, indeed a mess-mate, whom he knew to be intoxicated, and therefore in a very vulnerable position. The prosecutor recommends a sentence of between 15 and 20 months imprisonment and dismissal from the Canadian Forces, or if not dismissal then reduction in rank. As well, the prosecution seeks orders that the offender provides suitable DNA samples and register as a sex offender, and that he not possess weapons for a period of five years.

[10] Defence Counsel on behalf of the offender recommends a sentence of detention for 90 days and reduction in rank, and does not oppose the granting of the ancillary or-

ders sought, except for the weapons prohibition. He concedes that such a sentence is toward the lower end of the range, but argues that there was no attempt to penetrate the body of Petty Officer 1st Class V.S., and an attempt at full intercourse is not the only reasonable inference to be drawn from the facts proved to the satisfaction of the panel.

[11] I agree with Defence Counsel that in this case there were no threats to either of the victims, nor was there any gratuitous violence beyond the level of violence that is inherent in any serious sexual assault. But on all the evidence, I am satisfied beyond a reasonable doubt that the offender was about to engage in intercourse with Petty Officer 1st Class V.S. when she awoke from sleep and managed to push the offender out of her rack. This is a very serious form of sexual assault and is deserving of severe punishment. Whether or not penetration was actually attempted is, to my mind, not really relevant to the question of a fit sentence.

[12] The circumstances of shipboard life are such that crew-members forego aspects of personal privacy that others outside the service take for granted, for example, the simple expedient of locking one's door before retiring for bed. As a result, members are more vulnerable if a shipmate chooses to take advantage of that loss of privacy for selfish purposes. All members realize this loss of privacy, but all implicitly understand that in return each one of them has a duty to all the others to respect their privacy to the extent that the conditions of service permit. In a word, they trust each other. The violation of that understanding by the offender, in this case on two occasions, for the purpose of gratifying his sexual impulses amounts to an egregious breach of trust.

[13] In the present case Petty Officer 1st Class V.S. gave evidence during the sentencing hearing of the effect on her of the offence against her. I accept her evidence. These adverse effects upon her personal and professional life are very serious, and to my mind are well within the contemplation of someone in the circumstances of the offender as being a likely consequence of his actions.

[14] As well, there were two separate victims of the offender's conduct, although I note that the personal intrusion into the privacy of Petty Officer 2nd Class A.F. was a good deal less serious.

[15] As a direct consequence of the offences, and within a few days, both the offender and Petty Officer 1st Class V.S. were off the ship, then in a foreign port. Nobody aboard the ship was there for a pleasure cruise, and everyone had a job to do that was important to the smooth running of the ship. Although I heard no evidence specifically addressing the point, without doubt the loss of two senior hands cannot but have affected the ability of the ship to properly perform its duty in some degree.

[16] I am mindful of course of the personal circumstances of the offender. He is a mature man of 34 years of age and has served continuously since 1996 with an unblemished record until these offences. He is separated from his spouse and discharges financial obligations to her and supports two young children and his mother. He presently performs his work-related duties to a high standard.

[17] Although he was drunk at the time of the sexual attacks I do not consider this to be a mitigating circumstance.

[18] On all the circumstances, both of the offences and of the offender, I consider that the sentencing principles of denunciation and general deterrence are particularly weighty in arriving at a fit sentence. I am mindful though of the requirements of rehabilitation, and in particular in this case, the need to foster a greater sense of responsibility in the offender.

[19] By law, the punishment of detention cannot exceed 90 days. In my view the minimum term of incarceration called for by the circumstances of these offences and of this offender requires imprisonment well in excess of 90 day. I recognize that this is the first time the offender has committed an offence, and as a first offence the length of the term should be no more than is absolutely required to vindicate the objectives of sentencing that I have already referred to. On the application of the offender I order that the term of imprisonment be served at the Service Prison and Detention Barracks.

[20] This is a close case for dismissal, but ultimately I consider that the question of the offender's further service in the Canadian Forces should be determined by administrative authorities who have more complete information as to the prospects for the offender's continued career in the Canadian Forces.

[21] But reduction in rank I consider to be most appropriate. As I have observed in other cases, rank is a visible symbol of the trust placed in the member by the Canadian Forces. For a violation of that trust as serious as the one in this case, the offender has demonstrated that he is not worthy of the trust that is required of someone in his current rank. But as trust can be lost, it can also be regained over time, and rank restored, should he be afforded the opportunity for continued service.

[22] I have considered whether an order should be made prohibiting the possession by the offender of weapons. I am not persuaded on all the circumstances of this case that the interests of the safety of the public or of the offender require such an order, nor do I consider it desirable, and I therefore decline to make the order sought.

[23] Since the offence of sexual assault is a "primary designated offence" as defined, there will be an order for the taking of suitable DNA samples. As well, the offender will be required to register as a sex offender for a period of 20 years.

FOR THESE REASONS, THE COURT:

[24] **SENTENCES** you to imprisonment for a period of 12 months, and to reduction in rank to the rank of Leading Seaman. Pursuant to section 220 of the *National Defence Act*, the punishment of imprisonment is to be served in its entirety at the Service Prison and Detention Barracks.

[25] The sentence is pronounced at 1531 hours, 1 February 2012.

Counsel:

Lieutenant-Colonel M. Trudel, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major D. Berntsen, Directorate of Defence Counsel Services
Counsel for Petty Officer 2nd Class A.W. Adams