



COURT MARTIAL

Citation: *R v Pinnegar*, 2012 CM 2001

Date: 20120112

Docket: 201131

General Court Martial

Canadian Forces Base Suffield
Medicine Hat, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal J.G. Pinnegar, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Pinnegar, you have been found guilty, contrary to your pleas, on three charges of pointing a firearm, contrary to section 87 of the *Criminal Code*, which is a service offence pursuant to section 130 of the *National Defence Act*.

[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 described in the evidence that was led before the panel of this court and the evidence heard in the course of the mitigation phase and 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 an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or de-

gree 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 absolutely essential to the effectiveness of an armed force.

[5] 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 goals and objectives will inevitably predominate in arriving at 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 sentence should reflect an appropriate blending of these goals tailored to the particular circumstances of the case.

[6] Section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at courts 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.

[7] 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 impose.

[8] The facts underlying the offences were established in evidence to the satisfaction of the panel of this General Court Martial and were not really in issue on the trial. On three occasions, the offender, a military policeman, pointed his service pistol, a Sig Sauer, at two different members of the British Army, here at CFB Suffield, where a contingent of British forces regularly trains. The British soldiers were also military police members. On two occasions the pointing occurred in the detachment office used jointly by the Canadian and British MPs and on the last occasion the pointing occurred in the mess during a social occasion. On the first occasion the British MP saw the weapon being cleaned and apparently knew that it was not loaded at the time it was

pointed. The two British MPs would not have been aware of the state of the weapon on the other two occasions.

[9] There was no animosity or atmosphere of hostility among the parties on any of these occasions and the British MPs seemed to have treated the events as somewhat of a joke, although I suspect they also considered that the conduct was thoroughly unprofessional.

[10] On these facts the prosecution submits that a fit sentence is one of detention for a period of 15 days and seeks a weapons prohibition order under section 147 of the *National Defence Act* for a period of three years.

[11] Defence counsel, on behalf of Master Corporal Pinnegar, submits that if detention is imposed, the service of the sentence should be suspended, but submits that a reprimand and a fine would be fit in this case and opposes a weapons prohibition order.

[12] The offender has served in the Canadian Forces for 11 years, both as an artilleryman and latterly as a military policeman. He has no record of previous criminal or disciplinary infractions. His character, apart from these offences, is unblemished, as attested by the several letters of support from the people who know him best.

[13] Prior to a tour in Afghanistan his performance appraisal was very positive, but perhaps as a result of the experiences on the tour, his performance as a soldier is not presently meeting the high standard he formerly set for himself.

[14] I accept the evidence of the offender given on the sentence proceedings that he has no recollection of any of the events giving rise to these charges. Indeed, it appears on all the evidence that he simply could not accept that he had behaved in such a manner until he was confronted with the evidence of the witnesses on this trial. He now accepts the truth and is greatly disappointed with his own behaviour as reported by the witnesses.

[15] His evidence on these points might have been difficult to accept until the court heard the evidence of Dr Rodberg, a psychologist licensed to practice here in Alberta. I accept the expert evidence of Dr Rodberg. She diagnosed the offender to be suffering a severe case of post-traumatic stress disorder as a result of his service in Afghanistan during an eight-month tour that ended in March of 2008.

[16] Dr Rodberg was aware that the offender has no memory of the events giving rise to these charges and I understand her to say that the lack of memory may be attributable to severe PTSD or perhaps to what she called a dissociative condition that requires further professional investigation. In any event, Dr Rodberg did not appear to question the validity of the claim of lack of memory and I am satisfied on all the evidence that the offender's claim of loss of memory is genuine.

[17] On the other hand, on the evidence I have heard, there is simply no reasonable explanation for the offender to have engaged in this conduct. I do not see any cause and effect relationship between the offender's mental condition and the behaviour he showed on the occasions in question.

[18] I am also satisfied that the court need not attach much weight to the question of individual or specific deterrence. Master Corporal Pinnegar, as a trained and conscientious military policeman, knows now as he knew at the time of the offences, that this behaviour is serious, unprofessional, criminal conduct.

[19] I am satisfied that he has a complete insight into the gravity of his conduct and that he deeply regrets his actions. The court, however, must be concerned as well with general deterrence. For this reason it is true that reckless behaviour with a weapon by a trained and experienced member of the Canadian Forces can often attract a sentence involving incarceration, even for a first offence, but in my view, the principle of general deterrence is adequately vindicated in the present case by a non-custodial sentence. In this respect I attach significance to the continued rehabilitation of the offender, in particular, by imposing a sentence that will not have a deleterious effect on his continuing treatment for PTSD.

[20] On all the circumstances, both of these offences and of this offender, I consider that a reprimand and a fine are sufficient and fit.

[21] I decline to make a weapons prohibition order. The prosecution does not seek an absolute prohibition, but only a three-year order that would still permit the offender to possess weaponry in the course of his duties as a member of the Canadian Forces.

[22] The offender is an avid hunter and outdoorsman. I consider that, where appropriate, according to the advice of his psychologist or other treating professional, the offender should continue to develop his interests and hobbies. I do not see, on all the facts in this case, an unacceptable risk to public safety if the offender were to continue to have lawful access to guns and ammunition.

[23] I order that the Sig Sauer pistol, Exhibit 6, be sent to the Canadian Forces Provost Marshal via the officer in command of the National Investigation Service Western Region after 30 days from today's date or on the final disposition of any appeal that may be taken, whichever is later. I should say that on the wording of section 249.25 subsection 1 of the *National Defence Act*, I'm not at all clear that that is the source of the court's jurisdiction to make such an order, but on the other hand I don't have any doubt that the court does have jurisdiction to deal with exhibits that are properly before it.

[24] Stand up, please, Master Corporal Pinnegar.

FOR THESE REASONS, THE COURT:

[25] **SENTENCES** you to a reprimand and a fine in the amount of \$1500 to be paid in monthly instalments of \$250 each, commencing 1 February 2012 and continuing for the following five months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding balance is payable the day prior to your release.

Counsel:

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