



COURT MARTIAL

Citation: *R v Bernales-Solari*, 2012 CM 2004

Date: 20120319

Docket: 201201

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Ex-Gunner S.D. Bernales-Solari, Offender

Before: Commander P. Lamont, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Mr Bernales-Solari, having accepted and recorded your pleas of guilty to the second and third charges in the charge sheet; that is, in the second charge an offence of quarrelling with a person subject to the Code of Service discipline; and in the third charge a charge of drunkenness this court now finds you guilty of the second and the third charge.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I consider 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 Statement of Circumstances, Exhibit 7, and the materials submitted during the course of this 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 an 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 similar cases should be treated in similar ways. But 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 goals and 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 sentence should reflect a proper blending of these goals tailored to the circumstances of the case.

[5] As I told you when you tendered your pleas of guilty, section 139 of the *National Defence Act* prescribe 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] The facts of these offences are not complicated. On the date alleged in both charges Mr Bernales-Solari had had too much alcohol to drink. When he returned to his quarters he engaged in apparently verbal and physical fisticuffs with, his fellow member and gunner, Gunner Zieba. There's no indication before me that Gunner Zieba or for that matter Mr Bernales-Solari suffered any injury as a result of this behaviour. Oddly when this behaviour was stopped Mr Bernales-Solari went elsewhere, went to sleep, awoke, got up, and went to find Gunner Zieba to engage in a further confrontation. Matters came to an end apparently when the members of the military police arrived.

[8] On these facts counsel before me jointly recommend a sentence of a reprimand and a fine in the amount of \$1,000. The sentence to be pronounced, of course, is a matter for the court, but where as in this case both parties agree on a recommended disposition, that recommendation carries considerable weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court in the case of *Private Chadwick Taylor*, 2008, CMAC-1 have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[9] Both counsel have referred to aggravating and mitigating circumstances in this case. Counsel has correctly pointed out that the offences that I am dealing with precede in time the entries on the offender's Canadian Forces Conduct Sheet listing three offences; that is, two offences of failing to comply with a condition imposed under Division 3 in the *National Defence Act*; that is, conditions governing his release from custody and the third entry is an offence of drunkenness. All three matters attracted a sentence of 15 days detention. That was imposed in December of last year, but the offence dates referred to in the entries on the conduct sheet are subsequent to the offence date before me of 11 June 2011. The offender is entitled to be treated as a first offender for sentencing purposes, but I must say that the nature of the offences contained in the conduct sheet and the circumstances of the present offences raise a question in my mind as to whether the offender has difficulty with alcohol. I have not heard any evidence on the point.

[10] I am mindful, of course, that the offender is not only a first offender, he is a relatively young first offender at age 21 having enrolled in the in the Canadian Forces in October of 2009. His military career can be described as relatively short having been released from the Canadian Forces earlier this month. He is single, has no dependants, but is contributing to the rent at his current residence with his sister in Montreal.

[11] I attach significance to the plea of guilty that the offender has tendered with respect to both of these charges. A plea of guilty is often an indication of genuine remorse and is therefore an important step in the road to self-rehabilitation. I consider the pleas in this case to be an indication of remorse.

[12] Considering all the circumstances of which I am aware, both the circumstances of the offences and of the offender, I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest and I therefore accept the joint submission with a modification designed to capture the financial circumstances of the offender so far as they are known to me.

FOR THESE REASONS, THE COURT:

[13] **FINDS** you guilty of the second charge, for an offence under section 86 of the *National Defence Act* and finds you guilty of the third charge, for an offence under section 97 of the *National Defence Act*.

[14] **SENTENCES** you to a reprimand and a fine in the amount of \$975. The fine is to be paid in equal monthly instalments of \$75 each commencing on 15 April 2012 and continuing for the following 12 months.

Counsel:

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

Major E. Thomas, Directorate of Defence Counsel Services
Counsel for ex-Gunner S.D. Bernales-Solari