



COURT MARTIAL

Citation: *R v Noel*, 2014 CM 2003

Date: 20140318

Docket: 201376

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Ex-Ordinary Seaman M.D. Noel, Offender

Before: Colonel M.R. Gibson, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Ordinary Seaman Noel, having accepted and recorded a plea of guilty in respect of the first charge on the charge sheet, the court now finds you guilty of this charge. It is now my duty to determine an appropriate, fair and just sentence.

[2] The Statement of Circumstances entered into evidence by the prosecution, and agreed to by defence counsel on behalf of Ordinary Seaman Noel, indicates the following facts:

- (a) the Canadian Forces National Investigation Service commenced their investigation in March 2013 with respect to the involvement of Ordinary Seaman Noel in drug related activities;

- (b) on 16 April 2013, members of the CFNIS observed a number of people attending a garage adjacent to the residence of Ordinary Seaman Noel and members detected an odour of burnt marihuana emanating from the garage;
- (c) following these observations, six garbage bags were seized from the front curb of Ordinary Seaman Noel's residence and searched. The search resulted in the location of cannabis marihuana residue and paraphernalia associated with the use of cannabis marihuana;
- (d) members of CFNIS sought and received a search warrant for the place located at 11A Swordfish Drive, 12 Wing Shearwater, Canadian Forces Base Halifax, Nova Scotia. This place is located on a defence establishment and within the Private Members Quarters area, a neighbourhood occupied by other military members and their families;
- (e) a search was executed and 0.65 grams of dry marihuana was seized from the basement area of the residence of Ordinary Seaman Noel. Additionally, numerous drug paraphernalia were also seized, including a substantial number of used roaches and home-made pipes and a cutting knife and scissors. In addition to executing that search warrant, a personal cellular telephone was also searched, and from the phone information was learned indicating Ordinary Seaman Noel attempted to purchase small amounts of marihuana for personal use over the preceding few weeks;
- (f) a sample of the seized marihuana was sent to Health Canada for analysis. It was confirmed via Certificate of Analysis to be cannabis, marihuana; and
- (g) Ordinary Seaman Noel resided at this place together with his wife and three young children, aged seven, five and two years old. At the time, two houseguests were residing in the basement of their residence and they were present when the CFNIS conducted the search of the residence.

[3] The fundamental purposes of sentencing by service tribunals, of which courts martial are one type, are: to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and to contribute to respect for the law and the maintenance of a just, peaceful and safe society.

[4] The fundamental purposes are achieved by the imposition of just sanctions that have one or more of the following objectives: to promote a habit of obedience to the lawful commands and orders; to maintain public trust in the Canadian Forces as a disciplined Armed Force; to denounce unlawful conduct; to deter offenders and other persons from committing offences; to assist in rehabilitating offenders; to assist in reintegrating

offenders into military service where appropriate to separate offenders, if necessary, from other officers or non-commissioned members or from society generally; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims or to the community.

[5] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[6] Other sentencing principles include: a sentence should be increased or reduced to account for any relevant aggravating or mitigating factors; a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances; a sentence should be the least severe sentence required to maintain discipline, efficiency and morale; and any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[7] In the case before the court today, I must determine if the sentencing purposes and objectives would best be served by deterrence, denunciation, rehabilitation, or a combination of these factors.

[8] As noted by the Chief Military Judge, Colonel Dutil, in his reasons for decision in the case of *R v Ex-Private Humphrey*, 2011 CM 1009 at paragraphs 4 and 5:

[4] The Court Martial Appeal Court and numerous courts martial have constantly held that the use and trafficking of drugs is more serious in the military community because of the very nature of the duties and responsibilities of every Canadian Forces member in ensuring the safety and defence of our country and of our fellow Canadian citizens. The military community cannot tolerate breaches to its strict and well-known policy prohibiting the use of illicit drug. However, these broad statements must be applied in the context of individual cases and the appropriate sentencing principles and objectives.

[5] In the context of the Canadian Forces the unauthorized possession of drugs should normally attract punishments that promote the principles of denunciation of the conduct and punishment of the offender as well as general and individual deterrence.

[9] The court today must impose a sentence that is of the minimum severity necessary to maintain discipline, efficiency and morale. Discipline is that quality that every Canadian Forces member must have that allows him or her to put the interests of Canada and of the Canadian Forces before personal interests. This is necessary because members of the Canadian Forces must promptly and willingly obey lawful orders that may potentially have very significant personal consequences, up to injury or even death. Discipline is described as a quality because ultimately, although it is something which is developed and encouraged for the Canadian Forces through instruction, training and practice, it is something that must be internalized, as it is one of the fundamental prerequisites to operational effectiveness in any armed force.

[10] The court considers that the aggravating factors in this case are the following:

- (a) firstly, that Ordinary Seaman Noel violated the well known policy of the Canadian Forces prohibiting the possession and use of illicit drugs; and
- (b) that he did so on a defence establishment.

[11] The mitigating factors in this case include the following:

- (a) first and foremost, that Ordinary Seaman Noel accepted responsibility for the offence by entering a guilty plea, which is always an important mitigating factor;
- (b) that Ordinary Seaman Noel has no other convictions for drug-related offences;
- (c) the small quantity of cannabis that was seized;
- (d) that he has financial obligations in respect of his young family; and
- (e) the positive report of his service in the Canadian Forces given by his previous supervisor, Chief Petty Officer 2nd Class Chouinard.

[12] Counsel have made a joint submission for a sentence of a reprimand and a fine of \$1,000, payable in monthly instalments of \$100. Having reviewed the precedents submitted by counsel and the aggravating and mitigating factors present in this case, the court accepts the joint submission. I am persuaded that the proposed sentence accords with the principle of parity, and is the minimum sentence necessary to meet the purposes and objectives of sentencing in the military justice system.

[13] I would like to thank counsel for their appropriate, efficient and effective submissions as to sentence in this case.

FOR THESE REASONS, THE COURT:

[14] **FINDS** you guilty of the first charge on the charge sheet.

[15] **SENTENCES** you to a reprimand and a fine of \$1,000, payable in monthly instalments of \$100, commencing 1 April 2014.

Counsel:

Lieutenant-Commander D. Reeves, Canadian Military Prosecution Service

Counsel for Her Majesty the Queen

Lieutenant-Commander D. Liang, Directorate of Defence Counsel Services
Counsel for Ordinary Seaman Noel