



COURT MARTIAL

Citation: *R v deJong*, 2014 CM 2008

Date: 20140507

Docket: 201382

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant (N) D.D. deJong, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant (N) deJong, having accepted and recorded your guilty plea to the charge of desertion under section 88 of the *National Defence Act (NDA)*, the court now finds you guilty of that charge.

[2] It now falls to the court to determine a fit and appropriate sentence on the facts as they have emerged in evidence in this case.

STATEMENT OF CIRCUMSTANCES

[3] The facts of this case are disclosed in the agreed Statement of Circumstances entered into evidence as Exhibit 3. It provides as follows:

- a) "In January of 2012, Lieutenant (N) deJong was posted to Her Majesty's Canadian Ship (HMCS) PRESERVER as a Regular Forces Logistics Officer trainee. In this position Lieutenant (N) deJong's duties included the completion of required at-sea logistics officer training in order to challenge his Head of Department (HOD) board, and fully qualify as a Sea Logistics Officer. As an officer in the ship he was one of the qualified officers of the day responsible for the safety and security of the ship while alongside when so tasked.
- b) HMCS PRESERVER is the East Coast fleet supply and replenishment vessel for the Royal Canadian Navy, and is primarily tasked to replenish other Canadian and Allied naval vessels while conducting operations at sea.
- c) On 30 August 2012, HMCS PRESERVER commenced operations under OP CARIBBE, a Canadian Forces (CF) operation in support of the United States Coast Guard narcotic trafficking interdiction operations in the Caribbean Basin. On 16 September 2012, HMCS PRESERVER arrived alongside in Key West, Florida, United State of America in anticipation of participating in Exercise UNITAS upon departure from Key West. The purpose of this exercise was to allow a multi-national force consisting of Nations from North, South and Central America to build on multi-national coalitions and exercise defending the Americas. Exercise UNITAS consisted of traditional at-sea exercises as well as in-port training activities with participating Naval Forces. The Exercise UNITAS deployment provided a means of supporting regional stability in the region as the task group transited South of Cuba.
- d) In the early morning hours of 17 September 2012, Lieutenant (N) deJong had just returned from being ashore while off duty, where he had also dealt with shore authorities in relation to a number of Canadian sailors. He was awake in his cabin onboard HMCS PRESERVER at 0745 hours in order to attend the daily meeting of ship's officers at 0800 hours, and on completion of this meeting was directed to meet with the ship's Supply Officer.
- e) Following this meeting, Lieutenant (N) deJong signed a letter to his Commanding Officer (CO) through his chain of command titled "Constructive Dismissal". In this letter Lieutenant (N) deJong stated he had a "toxic working relationship "with the ship's Supply Officer, that he considered that the Supply Officer was harassing him, and that during a meeting with the Supply Officer on the morning of 17 September 2012, he advised the Supply Officer that, "he was harassing me and that I was writing my release". Lieutenant (N) deJong concluded his letter by stating "following my filing this memo I would like to be immediately repatriated and discontinue my service to the CF as I can not tolerate this working environment".
- f) At approximately 1000 hours Lieutenant (N) deJong attended the sick bay onboard HMCS PRESERVER and spoke with Warrant Officer Bryden, the ship's Physician's Assistant, regarding a situation that had arisen with

Lieutenant (N) deJong's chain of command, and his desire to be medically repatriated. Warrant Officer Bryden and Lieutenant (N) deJong spoke for a few minutes following which Warrant Officer Bryden attempted to locate the ship's Executive Officer and chain of command. Unable to reach them immediately, Warrant Officer Bryden informed Lieutenant (N) deJong that it might take longer than an hour to complete a medical repatriation, at which time Lieutenant (N) deJong "stormed out of sick bay stating 'I will do it myself.'"

- g) Warrant Officer Bryden followed Lieutenant (N) deJong to his cabin a few minutes later to again speak regarding a medical repatriation, and found Lieutenant (N) deJong in civilian clothing and leaving. Warrant Officer Bryden followed Lieutenant (N) deJong through the ship and onto the jetty attempting to reason with him to return, so Warrant Officer Bryden could initiate the medical repatriation process and assist with his concerns, but Lieutenant (N) deJong ordered Warrant Officer Bryden back to the ship. Warrant Officer Bryden again attempted to inform Lieutenant (N) deJong that he would work on his request and just needed more time. Lieutenant (N) deJong kept walking off the jetty and towards the gate, at which point Warrant Officer Bryden proceeded back to HMCS PRESERVER and reported the incident to the ship's Coxn.
- h) Sub-Lieutenant McKnight was an officer posted to HMCS PRESERVER and on 17 September 2012, was the Officer of the Day for HMCS PRESERVER. At approximately 0900 hours, Sub-Lieutenant McKnight had piped for all hands to land garbage, when he was approached by Lieutenant (N) deJong who asked if he could be excused from landing garbage in order to continue drafting his release. Sub-Lieutenant McKnight authorized Lieutenant (N) deJong to continue with his paperwork, and some time after this, observed Lieutenant (N) deJong present a folder to the ship's Supply Officer after which a "heated discussion was held." At some point after this, Lieutenant (N) deJong approached Sub-Lieutenant McKnight at the brow and informed him that he would be proceeding ashore in 30 minutes AWOL (absent without leave), as he couldn't take the situation anymore. At approximately 1040 hours Lieutenant (N) deJong again came to the brow, now dressed in civilian clothing and wearing a backpack. Lieutenant (N) deJong state to all "that he was going ashore and that he was going to be AWOL." Sub-Lieutenant McKnight followed Lieutenant (N) deJong over the brow and down the jetty in an attempt to get him to stop and talk, but was unsuccessful even slowing his pace and Lieutenant (N) deJong then ordered Sub-Lieutenant McKnight to return to the ship. At some point Warrant Officer Bryden caught up to them and Sub-Lieutenant McKnight directed that he speak further with Lieutenant (N) deJong and try to get him to come back to the ship; however Warrant Officer Bryden was unsuccessful.
- i) Chief Petty Officer 2nd Class Whitlock was the Chief Engineer of HMCS PRESERVER and at approximately 1030 hours on 17 September 2012, was standing in the vicinity of the ship's brow speaking with the Officer of the Day, Sub-Lieutenant McKnight. Chief Petty Officer 2nd Class Whitlock

observed Lieutenant (N) deJong approach the brow from forward on the ship, dressed in civilian attire and with a backpack. He observed Lieutenant (N) deJong step up onto the gangway, come to attention and announce in a loud voice "Officer of the Day, I am AWOL". He then observed Lieutenant (N) deJong proceed down the gangway and ashore, and observed Sub-Lieutenant McKnight follow after Lieutenant (N) deJong on the jetty while speaking with him.

- j) Lieutenant (N) deJong purchased airline tickets for himself to fly to Halifax, including Porter Airlines flights from Boston Airport, Boston, Massachusetts to Toronto city airport, Ontario and then from Toronto City airport to Halifax. Lieutenant (N) deJong boarded and took these flights, landing in Halifax at 1559 hours, 18 September 2012. Lieutenant (N) deJong did not purchase any return flights, and did not re-join HMCS PRESERVER. At 1650 hours, 18 September 2012, Lieutenant (N) deJong attended the Military Police Unit in Halifax, Nova Scotia and reported his arrival.
- k) On 17 September 2012, at 1554 hours, Lieutenant (N) deJong emailed Sub-Lieutenant McKnight, and stated:
 - l) "Sub-Lieutenant McKnight, I called the CO as you directed today. I left a message on his voicemail. I am in Orlando now waiting my flight to Baltimore and then to Boston. The next flight into Halifax that I can catch arrives at 1055 hours tomorrow. As I will be AWOL I will report to the MPs on arrival unless they meet me at the airport."
- m) In accordance with the posted duty watch schedule for HMCS PRESERVER, Lieutenant (N) deJong was scheduled to be the Officer of the Day on 18 September 2012, and HMCS PRESERVER remained under sailing orders to participate in Exercise UNITAS. Lieutenant (N) deJong did not have authority from his chain of command to depart HMCS PRESERVER or to transit to Halifax, Nova Scotia. As a direct result of Lieutenant (N) deJong's actions, HMCS PRESERVER continued on her operational deployment in support of OP CARIBBE and the international Exercise UNITAS short a qualified Officer of the Day for alongside duty, and a Sea Logistics Officer undergoing on the job training. In addition, Lieutenant (N) deJong did not complete the required Head of Department training in order to become a fully qualified Sea Logistics Head of Department."

[4] Counsel for the prosecution and defence are far apart on their recommendations as to sentence. The prosecution submits that an appropriate sentence would be one of reduction in rank to the rank of sub-lieutenant; together with a severe reprimand. The defence submits that the appropriate sentence would rather be a severe reprimand; together with a fine in the range of \$1,000 to \$3,000. Defence counsel submits that the punishments of imprisonment and reduction in rank are not appropriate on these facts.

[5] For the reasons that follow, I consider that the appropriate sentence on the facts of this case lies somewhere in between the outer extremes of the positions submitted by the prosecution and the defence.

[6] The fundamental purposes of sentencing by service tribunals in the Military justice system, 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. In short, to promote operational effectiveness and to do justice.

[7] The fundamental purposes are achieved by the imposition of just sanctions that have one or more of the following objectives:

- a) to promote a habit of obedience to lawful commands and orders;
- b) to maintain public trust in the Canadian Forces as a disciplined armed force;
- c) to denounce unlawful conduct;
- d) to deter offenders and other persons from committing offences;
- e) to assist in rehabilitating offenders;
- f) to assist in reintegrating offenders into military service;
- g) to separate offenders, if necessary, from other officers or non-commissioned members or from society generally;
- h) to provide reparations for harm done to victims or to the community; and
- i) to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community.

[8] 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. Other sentencing principles include:

- a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances;
- b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- c) an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances;
- d) a sentence should be the least severe sentence required to maintain discipline, efficiency and morale; and

- e) any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[9] 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.

[10] Offences such as the section 88 offence of desertion created by Parliament in this case are aimed to protect and preserve the core values of military discipline and to preserve the operational effectiveness of the Canadian Forces, to allow it to effectively fulfil its mission in service to Canada. The punishments imposed for these types of offences should emphasize the objectives of general and specific deterrence, as well as denunciation of the unlawful conduct. The sentence given by the court should also be tailored to meet the objectives of rehabilitating offenders and assisting their reintegration into military service, where appropriate.

[11] The court 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 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 by 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. One of the most important elements of discipline, particularly as members become more senior in rank and responsibility, is self-discipline. And this is the characteristic that the actions of Lieutenant (N) deJong as described in the Statement of Circumstances indicate he lacked.

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

- a) first, the objective gravity of the offence of desertion under section 88 of the *National Defence Act*. This section provides that:

(1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if the person committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment and, in any other case, is liable to imprisonment for a term not exceeding five years or to less punishment.

- b) second, that in deserting HMCS PRESERVER, Lieutenant (N) deJong committed one of the most grave breaches of trust that a commissioned officer can commit: he abdicated his responsibility, and ran away from his duty;

- c) third, that his actions had the effect of depriving HMCS PRESERVER of a qualified Officer of the Day, and he missed his scheduled duty as Officer of the Day on 18 September; and
- d) fourth, that Lieutenant (N) deJong deserted in a fit of pique, and persisted in this course of conduct over many hours, rather than returning to his ship.

[13] The mitigating factors in this case are significant. They include the following:

- a) first and foremost, that Lieutenant (N) deJong accepted responsibility for the section 88 desertion offence by entering a guilty plea, which is always an important mitigating factor. Moreover, he repeatedly acknowledged during his evidence that his actions had been wrong, and that he felt "terrible" at what he did, demonstrating what struck the court as sincere remorse for his conduct;
- b) that Lieutenant (N) deJong has no entries on his conduct sheet, and is a first offender before the court;
- c) thirdly, that although the offence of desertion is an objectively very serious one, punishable by imprisonment for life or for five years depending upon the circumstances of its commission on the facts in this case, that involved his absence without authority for some 30 hours, the subjective gravity of the offence committed was toward the more minor end of the spectrum for this particular offence;
- d) fourthly, the positive performance evaluation reports for 2012-2013, and 2013-2014, in evidence as Exhibit 10. During the 2013-2014 reporting period, Lieutenant (N) deJong was ranked fifth out of 40 lieutenants(N)/captains across all officer classifications at CFB Halifax, and received a promotion recommendation of "immediate";
- e) next and very importantly, the positive assessment of Lieutenant (N) deJong and his future prospects for employment in the Canadian Forces given by his current supervisor, Commander Forward, and the Unit Chief Warrant Officer for Base Logistics at CFB Halifax, Chief Petty Officer 1st Class Hutchinson;
- f) next, the evidence of the otherwise good character of Lieutenant (N) deJong given by his church pastor, Darren Millett, and his involvement in various community activities; and
- g) lastly, the significant period of time that has elapsed since the commission of the offence. He deserted his post on 17 September 2012. The charge sheet was not signed until 2 October 2013, over a year later. This in a case that is

not factually complex. This is not in accord with the duty to act expeditiously contained at section 162 of the *National Defence Act*, which provides that charges laid under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit and this trial is occurring in May 2014, some 20 months later. This matter has been hanging over his head during that extended period.

[14] In determining an appropriate sentence in this case, I have carefully canvassed all of the sentencing precedent cases provided by the prosecution and defence. There are actually very few recent precedents for the offence of desertion. This is a good thing. But it does mean that none of the cases cited are directly on all fours with the facts of the present case. The sentences awarded span a range from reprimands accompanied by fines, to reduction in rank, to custodial sentences.

[15] So I turn now to an analysis on the basis of first principles. The basic fact of military service is found at section 23 of the *National Defence Act*, which deals with the obligation of members to serve:

- (1) the enrolment of a person binds the person to serve in the Canadian Forces until the person is, in accordance with the regulations, lawfully released.

In becoming members of the Canadian Forces, sailors, soldiers and airmen and airwomen undertake an unlimited liability to serve. They cannot unilaterally decide for themselves that they want to pick up their marbles and go home. The Canadian Forces cannot indulge fits of pique in which members abandon their responsibilities in the face of perceived adversity. They are expected and required to show sufficient depth of character to persevere in their duty. This is a deadly serious business that we are in. The one thing that an officer cannot do, notwithstanding whatever difficulties or challenges he or she may be faced with, is to run away. It is difficult to imagine an offence more corrosive of discipline and operational effectiveness than that of desertion, of voluntary abandonment of one's post, and it must be denounced and deterred.

[16] Lieutenant (N) deJong, you made a mistake. It was a serious mistake. It is fortunate for you that there were not more serious consequences that accrued to your ship when you deserted. But there are none of us who have not made mistakes in the course of our careers. The court is very conscious of not setting up an unattainable standard of perfection, and of not foreclosing the opportunity, where appropriate, for members to recover and learn from their mistakes and to continue to provide valuable service to the Canadian Forces and to Canada. The rehabilitative aspect of sentencing is an important one.

[17] I agree with the submission of counsel that the imposition of a custodial sentence of imprisonment would probably extinguish the prospects of your continuing to serve as a member of the Canadian Forces, and that your recent assessments indicate that you do have the potential to make valuable contributions in future.

[18] An appropriate perspective must be maintained here. The offence you have committed is not one of violence or of dishonesty. But, there are some things that cannot be tolerated in a professional armed force. There must be consequences for your decision. You must be held properly accountable for your choice to abandon your post in a fit of petulance. You are a mature man, now aged 43 and have eight years of service as a commissioned officer. You are not a young sailor, still flush with the immaturity of youth.

[19] I accept your representation to the court that you would never do it again, so in the court's estimation, specific deterrence is not a significant factor in this case, but general deterrence and denunciation are. This is not conduct that can be tolerated in any member of the Canadian Forces, much less a commissioned officer.

[20] The Commission that each officer in the Canadian Forces receives from Her Majesty the Queen contains the following words:

"We reposing especial Trust and Confidence in your Loyalty, Courage and Integrity do by these Presents Constitute and Appoint you to be an Officer in our Canadian Armed Forces ..."

These words mean something. They mean a great deal about the expectations that are placed on commissioned officers in the Canadian Forces. Implicit in the concepts of loyalty and courage is that if one is in a difficult circumstance, one does not run away from it, but rather constructively engages, using the available mechanisms to deal with the problem. You have indicated that you felt harassed and disrespected aboard HMCS PRESERVER. There were many appropriate mechanisms and avenues of redress potentially available to you to engage and deal with these issues, but you did not engage them, or persist in engaging them when you did not immediately achieve the outcome you desired. Instead you chose to run away. This is reflective of a fundamental lack of maturity and of understanding of what is entailed in being an officer.

[21] As confirmed by the Court Martial of Appeal Court in the case of *LS Reid and LS Sinclair*, 2010 CMAC 4 at paragraph 39, the punishment of reduction in rank is well suited to signifying, more effectively than any fine or reprimand that can be imposed, the Canadian Forces' loss of trust in the offending member. Its effect is both to express the severe disapprobation of the offender's conduct, as well as to lessen his or her ability to exercise command over other Canadian Forces members, unless and until he or she can demonstrate that they are once again worthy of holding that rank through demonstrated performance, reliability and integrity.

[22] Absent the significant mitigating factors present in this case, the court would have imposed the punishment of reduction in rank.

[23] It is the court's hope that you will learn from this incident, and apply the potential that your current superiors evidently assess that you possess to move forward and to make a valuable contribution to the Canadian Forces.

[24] Lieutenant (N) deJong, you are being given another chance. Make the best of that chance.

FOR THESE REASONS, THE COURT:

[25] **FINDS** you guilty of the offence of desertion on the charge sheet; and

[26] **SENTENCES** you to the punishments of a severe reprimand and a fine of \$5,000.

Counsel:

Lieutenant-Commander D. Reeves, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major S. Collins, Directorate of Defence Counsel Services
Counsel for Lieutenant (N) deJong