



COURT MARTIAL

Citation: *R. v. Coupal*, 2009 CM 3024

Date: 20091201

Docket: 200943

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Ex-Ordinary Seaman J.M.C. Coupal, Offender

Before: Lieutenant-Colonel L.-V. D'Auteuil, M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCING

[1] Ordinary Seaman Coupal, since the Court Martial has accepted and recorded your admission of guilt on the second count, the Court now finds you guilty of this count. Accordingly, the Court directs a stay of proceedings on the first count, which is an alternative one to the second count, for which the Court has just accepted and recorded your admission of guilt.

[2] As the military judge presiding at this Standing Court Martial, it is my duty to determine the sentence.

[3] The military justice system constitutes the ultimate means to enforce discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in a more positive way, promote good conduct. It is through discipline that armed forces ensure that their members will perform their missions successfully, confidently and reliably.

[4] The military justice system also ensures that public order is maintained and that persons charged under the *Code of Service Discipline* are punished in the same way as any other person living in Canada.

[5] It has long been acknowledged that the purpose of a separate system of military courts or of military justice is to permit the Canadian Forces to deal with matters relating to the *Code of Service Discipline* and the maintenance of the effectiveness and morale of the troops. That being said, the punishment imposed by any court, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances of each case. It also goes directly to the duty imposed on the Court to impose a sentence commensurate with the gravity of the offence and the previous character of the offender, as stated at subparagraph 112.48(2)(b) of the QR&O.

[6] In this case, the prosecution and defence counsel have presented a joint submission on sentencing. They recommend that the Court sentence you to a \$500 fine. The Court Martial is not bound by this recommendation. However, it is well established in case law that there must be compelling reasons to enable the Court to disregard it. It is also generally recognized that the Court should accept the recommendation unless doing so would be contrary to the public interest or would bring the administration of justice into disrepute.

[7] The Court has taken into consideration the recommendations made by counsel in light of the relevant facts as they emerge from the summary of the circumstances. It has also considered the submissions in light of the relevant sentencing principles, including those set out at sections 718, 718.1 and 718.2 of the *Criminal Code*, to the extent that those principles are not incompatible with the sentencing provisions under the *National Defence Act*. Those principles are as follows: first, protection of the public, and in this case the public includes the interests of the Canadian Forces; second, punishment of the offender; third, the deterrent effect of the sentence, not only for the offender but also for any person who might be tempted to commit such offences; fourth, separation, where necessary, of offenders from the rest of society, including members of the Canadian Forces; fifth, the imposition of sentences similar to those imposed on offenders for similar offences committed under similar circumstances; and sixth, the rehabilitation of the offender and reintegration of the offender into society. The Court has also considered the representations made by counsel, including the case law submitted, the offender's testimony, the joint summary of facts and the documentation introduced in evidence.

[8] The Court agrees with counsel for the prosecution that the need to protect the public requires the imposition of a sentence that first emphasizes general deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct.

[9] In this case, the Court is dealing with an offence of neglect to the prejudice of good order and discipline for having neglected to follow the firearms handling

procedures, which resulted in a blank round being discharged from a C7 line-throwing rifle. This is a serious offence, but the Court intends to impose what it considers to be the minimum sentence applicable in the circumstances.

[10] In arriving at what it considers to be a fair and appropriate sentence, the Court has also considered the following aggravating and mitigating factors.

[11] Firstly, the objective seriousness of the offence. You have been found guilty of an offence under section 129 of the *National Defence Act* for neglect to the prejudice of good order and discipline. This offence is punishable by dismissal with disgrace from Her Majesty's service or less punishment.

[12] Secondly, the subjective seriousness of the offence. In the circumstances as disclosed in the summary read by counsel for the prosecution, which you have accepted as true, considering that you had the skills required to handle such a weapon, you knew that it was your duty to act in a safe manner at all times to avoid any unfortunate incidents, which you neglected to do. The fact that this took place during a sea exercise, while you were surrounded by other sailors, is an aggravating factor that the Court must also take into consideration, since all Canadian Forces members must be able to count on other members' competency and personal discipline for a successful mission carried out in the greatest possible safety.

[13] The Court considers the following factors to be mitigating:

- a. Your plea of guilty is clearly a sign of remorse and of your sincere intention to remain a valid asset to Canadian society, which came across clearly during your testimony;
- b. The absence of a conduct sheet or criminal record for similar offences;
- c. The fact that your actions did not have any unfortunate consequences for the members around you at the time of the incident or on the operations of the vessel you were aboard;
- d. The fact that you had to face this court martial, which was announced and accessible to the public and which took place in the presence of some of your colleagues, has no doubt had a very significant deterrent effect on you and on them. The message is that the kind of conduct that you displayed will not be tolerated in any way and will be dealt with accordingly; and
- e. Your family, financial and personal situations following your recent release from the Canadian Forces.

[14] A fair and just sentence should take into account the seriousness of the offence and the offender's degree of responsibility in the particular circumstances of the case.

The Court believes that the joint submission is not unreasonable in these circumstances. Accordingly, it will accept the recommendation made by counsel to sentence you to a \$500 fine, considering that this sentence is not contrary to the public interest and would not bring the administration of justice into disrepute.

[15] Ordinary Seaman Coupal, stand up. The Court sentences you to a fine of \$500, payable immediately.

Counsel:

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

Major J.A.E. Colonel D. Couture, Directorate of Defence Counsel Services
Defence Counsel for Ex-Ordinary Seaman Coupal