



COURT MARTIAL

Citation: *R. v. Payne*, 2014 CM 1017

Date: 20140717

Docket: 201411

General Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal C.D. Payne, Offender

Before: Colonel M. Dutil, Chief Military Judge

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Payne has admitted his guilt to one count of stealing under s. 114 of the *National Defence Act*. Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that Master Corporal Payne be sentenced to a reprimand and a fine in the amount of 700 dollars. Although, the Court is not bound by this joint submission, the Court can only reject it if that recommendation is contrary to the public interest and the sentence would bring the administration of justice into disrepute.

[2] The circumstances surrounding the commission of the offence are straightforward. On Saturday 14 December 2013, Master Corporal Payne, who was then a Corporal, was a Canadian Forces Regular Force Medical Technician posted to Her Majesty's Canadian Ship *Regina* at Canadian Forces Base Esquimalt, British Columbia. He came onboard Her Majesty's Canadian Ship *Regina* at approximately 1300 hours on 14 December 2013.

[3] On coming aboard, he had the duty coxswain piped to sick bay. The coxswain responded to the pipe and met Master Corporal Payne at the sick bay, where the offender advised that he needed to obtain some paperwork from the sick bay. As Master Corporal Payne did not have access to the keys for the sick bay, the coxswain unlocked the sick bay so that Master Corporal Payne proceeded to look for his paperwork.

[4] They had a short conversation and after having found his paperwork, the offender retrieved an empty pill phial from a drawer. He then unlocked an upper cabinet containing medication and withdrew a bottle of Pantoloc 40 mg. He transferred approximately five tablets of Pantoloc 40 mg, which was a property of the Canadian Forces, into the empty pill phial. In the course of doing so, the coxswain asked whether Master Corporal Payne was authorized to self-medicate pills to which the offender responded that he had that authorization. The offender then replaced the Pantoloc bottle in the upper cabinet, locked the cabinet, and left the sick bay with the pill phial containing Pantoloc tablets to proceed about his business.

[5] As put before the Court, Pantoloc 40 mg is a prescription medication. It is to deal with acid reflux and he was not authorized to provide himself with that medication on that date and as a QL5A Corporal Medical Technician at the time. Master Corporal Payne knew that he was not authorized to provide himself or others with prescription medication, including the one that he stole.

[6] The key elements of this case relate to the situation of the offender, as a medical technician with knowledge and easier access to prescription medication, and the importance to adhere to strong medical ethics. This case is not about the nature of the medication or the drug — in this case Pantoloc 40 mg which is taken to treat reflux by reducing the amount of acid the stomach produces — its quantity (5 tablets) and its financial value. All of that is of marginal importance in the context. The key element is basic trust in the medical technicians. We know that when we sentence a person at court martial, we have to follow some sentencing principles and objectives including those that are set out in the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline. Of those objectives, general deterrence and denunciation of the conduct must take precedence over any other objective or principle in this case. I will also add that, I find that the proposed sentence must also assist in achieving the objective of specific deterrence and rehabilitation.

[7] I think it is one of those cases where I can clearly state that the sentence proposed is truly the minimum necessary intervention that is required in these circumstances. I agree that it is within the range but counsel, have identified what is the minimum necessary intervention in the circumstances.

[8] With regard to the specific aggravating and mitigating circumstances of this case beyond the elements that are generally related to the gravity of the offences (in the case of the offence of stealing punishable by imprisonment for a maximum period of 7

years), and the moral blameworthiness of the offender. I consider to be aggravating in this case:

- (a) The subjective nature of the offence as it is revealed by the Statement of Circumstances provided to the Court. With regard to the offence of stealing, I find it mostly aggravating that the offender used the duty coxswain to gain access to the sick bay and lied in order to get 5 pills of Pantoloc that he could have easily obtained through the normal procedure. Such a shortcut is totally unjustified.
- (b) The conduct of the offender showed a profound lack of judgement and opportunism which are in contradiction of what is expected of a medical technician of his rank and experience.

[9] However, there are very compelling mitigating circumstances as well:

- (a) He has entered a plea of guilty at the first opportunity. I am convinced that he has sincere remorse and that he fully accepts his responsibility in this matter.
- (b) He has no criminal record or disciplinary conduct sheet.
- (c) He has a very impressive career in the Canadian Forces. He is recognized by his superiors as an outstanding medical technician as demonstrated by the overwhelming documentary evidence provided by counsel for the defence.
- (d) He has successfully completed his period of probation with regard to the recorded warning that was imposed on him as an administrative measure for the events that led to the charge. It appears that he has now regained the confidence of his chain of command to fulfill his duties as a medical technician.

[10] The Court agrees with counsel that the proposed sentence is the minimum sentence. It is not so off the mark that it would bring the administration of justice into disrepute. I have absolutely no hesitation to accept it. The proposed sentence will achieve and meet the objectives sought, namely general deterrence, specific deterrence, denunciation of the conduct and also rehabilitation. Overall, I conclude that Master Corporal Payne has made a strong error in judgment and that his credentials, after a thorough review of the documents that were provided, tend to reassure the Court that this is and will remain an isolated incident.

FOR THESE REASONS, THE COURT:

[11] **FINDS** you guilty of the first charge under s.114 of the *National Defence Act*

[12] **SENTENCES** you to a reprimand and a fine in the amount of 700 dollars payable forthwith.

Counsel:

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

Major S. Collins, Directorate of Defence Counsel Services, Counsel for Master Corporal Payne