



COURT MARTIAL

Citation: *R. v. Admiraal*, 2014 CM 1016

Date: 20140717

Docket: 201404

General Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Ordinary Seaman L.W. Admiraal, Offender

Before: Colonel M. Dutil, Chief Military Judge

REASONS FOR SENTENCE

(Orally)

[1] Ordinary Seaman Admiraal plead guilty to one count of wilfully causing damage to public property, under s 116 of the *National Defence Act*; one count of an act for the prejudice of good order and discipline, under s. 129 of the *National Defence Act*; and, one count of Drunkenness under s 97 of the *National Defence Act*. These offences were committed on 23 August 2013 when he was a student on the Naval Communicator QL3 course, here at Canadian Forces Base Esquimalt.

[2] Counsel for the Prosecution and Defence have made a joint submission on sentence. They recommend that the court impose a severe reprimand accompanied by a fine in the amount of 2000 dollars payable in 20 equal instalments of 100 dollars. Of course, the court is not bound by this joint proposal but it cannot reject it unless it is unfit, contrary to public interest or it would otherwise bring the administration of military justice into disrepute. This is not one of those cases.

[3] The circumstances surrounding the commission of the offences reveal that, on that date, Ordinary Seaman Admiraal lived in one room at Nelles Block at Canadian Forces Base Esquimalt. There was another room, room 312, which was an unassigned and unoccupied barracks room that had been left unsecured by persons unknown. At the end of his work day on 23 August 2013, the offender was dismissed from his duties. At this point he was not on duty and not expected to be placed on duty until the following Monday, 26 August 2013. Therefore after his duties, he returned to his room and began drinking alcohol. He then proceeded to look for a friend, at which point he discovered that room 312 was unsecured. He consumed additional alcohol in room 312, with other comrades who had joined him in that room. He later returned to his room and then went to the Pacific Fleet Club drinking more alcohol.

[4] On Saturday 24 August 2013, Ordinary Seaman Admiraal awoke, intoxicated, in his room at approximately nine o'clock in the morning. He then went to room 312 of Nelles Block, where he again began to drink alcohol heavily. An hour later, he left room 312, looking for two friends in order to ask them to join him in room 312. He then returned to room 312, where he was joined by other course mates. While drinking and discussing martial arts, Ordinary Seaman Admiraal stated he had done some knife fighting in the past. He was then provided with a knife by a course mate and asked to demonstrate knife fighting techniques, including how to make a frontal attack on someone. He then took a mattress in that room, the property of the Canadian Forces, to demonstrate his techniques by stabbing the mattress and slicing it upwards. Of course, these actions caused damage that mattress.

[5] On the morning of 24 August 2013, the offender sent a text message to another friend. Accompanying the text message was a photograph of the damaged mattress from room 312. A week after, rumours at the school were such that it was believed that vandalism had occurred between 23 and 25 August 2013. As a result of these rumours, and the damage to room 312, the unit commenced a unit disciplinary investigation on 30 August 2013.

[6] During that time period, Ordinary Seaman Admiraal approached a friend to whom he had sent the text message at the smoking pit outside Nelles Block, at Canadian Forces Base Esquimalt, and he discussed the events with that friend to finally ask him to delete the text message which contained the photograph. The offender expressed to his friend that he needed him to delete the text message and the photo because they were evidence linking him to events in room 312. As a result, his friend deleted the text message.

[7] Following these incidents, Ordinary Seaman Admiraal was removed from the course, his QL3 course, and shortly after or at the same time almost, he sought assistance for drinking and psychological issues. Since then he has since completed with success some programs to deal with stress and anger management issues, and he has not been involved with any alcohol issue or incident since that date.

[8] In sentencing an offender under the Code of Service Discipline, the court must guide itself with the sentencing purposes, principles and objectives, including those set out in ss. 718.1 and 718.2 of 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 by imposing punishments that would meet one or more objectives and principles that are contained in those subsections. The prosecution today, asked this court to impose a sentence that would meet the objective of general deterrence and also the objective of denunciation of the conduct. I agree with that. These are appropriate in the circumstances.

[9] The evidence presented at the sentencing hearing this morning, clearly points out that the events occurred as a result of heavy drinking at a time where the offender had drinking and psychological problems or issues. These problems appear to be well under control today and certainly the first offence conduct or the behaviour of the offender since almost a year is very positive, as shown by the numerous exhibits filed by defence counsel. Consequently, I believe that a sentence to be imposed does not require emphasizing the need for specific deterrence but it should also promote the rehabilitation of the offender. His work and behaviour, as I said, has been beyond reproach since that time.

[10] I now turn quickly to the aggravating and mitigating circumstances of this case, beyond the elements of the objective gravity of the offence and the moral blameworthiness of the offender. I consider the aggravating factors in this case are the following:

- (a) The deliberate attempt to divert a disciplinary investigation that concerning him by asking a comrade to destroy evidence that would tend to incriminate him. This is very serious in the circumstances and it is unfortunate and I am quite certain it will never happen again.
- (b) The degree of responsibility and participation of Ordinary Seaman Admiraal in the events that led to the improper use of the premises at Nelles Block, room 312, the damage to a mattress located in an unsecure room and the subsequent request made to a colleague to erase material that would link him to the said damage.

[11] The strong mitigating circumstances are the following:

- (a) Ordinary Seaman Admiral has accepted full responsibility for his conduct by pleading guilty to the charges before the court but also in expressing his intent to plead guilty at the earliest opportunity. The court is satisfied that there is a genuine sign of remorse and that he profoundly regrets his behaviour.

- (b) He is still very young at 24 years of age. This is his first experience with the justice system either military or civilian. I hope that this is the last time.
- (c) His performance and behaviour since August 2013 has been beyond reproach and obviously his chain of command is very supportive and believe that he will become a very valuable asset for the Canadian Forces if he wishes to continue in that direction.

[12] The court finds that the proposed sentence is within the range applicable for this type of offences when tried together for events that took place during the same time frame. The proposed sentence is adequate to meet the objectives sought, namely denunciation, general and specific deterrence and it will assist in the rehabilitation of the offender.

FOR THESE REASONS, THE COURT:

[13] **FINDS** the offender, Ordinary Seaman Admiraal, guilty of the one count of wilfully causing damage to public property, under s. 116 of the *National Defence Act*, one count for an act to the prejudice of good order and discipline under s. 129 of the *National Defence Act* and one count of drunkenness under s. 97 of the *National Defence Act*.

[14] **SENTENCES** the offender, Ordinary Seaman Admiraal, to a severe reprimand and a fine in the amount of 2000 dollars payable in 20 equal and consecutive monthly instalments beginning on 31 July 2014. Should the offender be released from the Canadian Forces prior to the full payment of the fine, the balance will be payable immediately prior to the effective date of release.

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 Ordinary Seaman Admiraal.