



## COURT MARTIAL

**Citation:** *R. v. Cummings*, 2014 CM 1015

**Date:** 20140714

**Docket:** 201371

General Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Petty Officer 2nd Class R.F. Cummings, Offender**

**Before:** Colonel M. Dutil, Chief Military Judge

---

### REASONS FOR SENTENCE

(Orally)

[1] Prior to the assembly of the court martial panel, the Court has received Petty Officer 2nd Class Cummings plea of guilty of the only remaining charge that appears as the third charge on the charge sheet. The first and second charges were withdrawn by the prosecution at the beginning of the proceedings of this General Court Martial. As no other charge remained before the Court, I shall now determine the sentence.

[2] Petty Officer 2nd Class Cummings has pleaded guilty to the offence of conduct to the prejudice of good order and discipline under s. 129 of the *National Defence Act*. The particulars of the charge read as follows:

In that he, between 13 January 2013 and 8 February 2013, at Canadian Forces Base Esquimalt, British Columbia, initiated administrative action against a subordinate relating to the breach of a Base Standing order, which standing order Petty Officer 2nd Class Cummings repeatedly breached himself.

[3] The circumstances surrounding the commission of the offence reveal that in mid-January 2013, the offender was a Regular Force member of Her Majesty's Canadian Ship WINNIPEG Combat Systems Engineering (CSE) Department. At the time he was working at Building N-93 at Canadian Forces Base Esquimalt, British Columbia where there is a parking lot that contains a number of reserved parking spots, or billets. Pursuant to Base Standing Order (BSO) 2-307, reserved parking billets are each allocated to one individual to park one's vehicle. According to BSO 2-307, no person is permitted to park in reserved billets except the individual to whom the billet is assigned. Reserved parking billets are designated with either numbers or letters painted on the spot. One of the reserved parking spots outside of Building N-93, marked with the painted letter I, spot I, was reserved for a specific naval officer but he did not regularly use his reserved parking spot. On an unspecified day between 13 and 18 January 2013, a sailor, also a member of Her Majesty's Canadian Ship WINNIPEG CSE Department, parked in spot I. Petty Officer 2nd Class Cummings told that sailor that he could not park there, as it was reserved. The said sailor then moved his car to another spot.

[4] Between 13 January 2013 and 8 February 2013, the offender parked his own vehicle in spot I on a number of occasions. The same sailor noted that fact as well as other members of the CSE Department. Petty Officer 2nd Class Cummings was aware of the Base Standing Order. He was aware that he was not permitted to park in a reserved parking spot not assigned to him. He was equally aware that spot I was a reserved parking spot not assigned to him.

[5] Subsequent to the initial conversation between the offender and the sailor, Petty Officer 2nd Class Cummings had noticed that the sailor in question had parked his vehicle in a different reserved parking spot outside Building N-93. The individual assigned that parking spot parked his car behind the sailor's truck so that he could not move. Petty Officer 2nd Class Cummings contacted the individual and told him he would deal with the situation so that it did not happen again. In response, following discussion with other senior staff, between 13 January 2013 and 8 February 2013, the offender initiated administrative action against the sailor, in the form of an Initial Counselling, as provided for in Defence Administrative Order and Directive 5019-4. When the offender spoke with his immediate superior, the latter approved of the taking of this administrative action against the sailor. On 7 February 2013, the offender's immediate supervisor went to Building N-93 to supervise the administering of the Initial Counselling against the sailor. Just outside of Building N-93, the sailor's immediate supervisor, stopped the offender's supervisor and asked to speak to him. He advised him that the offender himself had been regularly using the reserved parking spot outside Building N-93, and questioned the perceived unfairness of Petty Officer 2nd Class Cummings taking administrative action against his subordinate for parking in a reserved parking spot, when the offender had been repeatedly seen doing the same thing and he also explained that many of the junior members of the department were aware of this action which had a negative effect on morale, good order, and discipline within the CSE Department in Her Majesty's Canadian Ship WINNIPEG. As the two supervisors were speaking, they observed the offender driving into the parking lot outside Building N-93

and parked in spot I. Shortly after, as Petty Officer 2nd Class Cummings and his supervisor spoke about the parking issue, and other matters. In response, the offender told his supervisor "I don't give a fuck" or words to that effect.

[6] As a result of the offender's own behaviour, his supervisor decided not to allow the proposed administrative action against the sailor who had disregarded the base standing order to proceed.

[7] I must now determine what shall be an appropriate, fair and just sentence. In the context of sentencing an offender under the Code of Service Discipline, the Court Martial Appeal Court has expressly stated that a court martial should guide itself with the appropriate sentencing purposes, principles and objectives, including those enunciated in sections 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 meet one or more of the following objectives:

- (a) to denounce the unlawful conduct;
- (b) to deter the offender but also others who might be tempted to commit such offences;
- (c) to separate offenders from society, where necessary;
- (d) to provide reparations for harm done to the victims or to the community;
- (e) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community; and
- (f) the reformation and rehabilitation of the offender.

[8] The sentence must also take into consideration the following principles. The sentence must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility. It should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A Court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. Finally, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, the Court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline.

[9] Counsel for the prosecution and defence jointly recommend that the Court impose a sentence composed of a reprimand and a fine in the amount of 1500 dollars. I accept that their submission falls within the range for this type of offence. The sentence is appropriate to meet the objectives of denunciation and deterrence which are

paramount in the circumstances. The facts of this case go beyond the contravention of an order prohibiting the parking of a vehicle in a reserved parking space that was assigned to someone else. It is truly about the failure in leadership of a senior non-commissioned officer in administering discipline to subordinates for a conduct that he considered himself not to be reprehensible.

[10] I now turn to the specific aggravating and mitigating circumstances of this case beyond the elements that are generally related to the gravity of the offence — which is a serious offence punishable by dismissal with disgrace from Her Majesty's service in the context of an offence under section 129 of the *National Defence Act*—and also the moral blameworthiness of the offender.

[11] The Court considers the following elements to be aggravating factors in the circumstances of this case:

- (a) The impact on the unit discipline: The offender's decision to recommend administrative action on a subordinate for something that mirrored his own conduct caused an immediate sense of unfairness in the unit. At least, it is commendable that the sailor's supervisor showed his own leadership to the offender's own supervisor to denounce this conduct.
- (b) The offender's experience and knowledge: Petty Officer 2<sup>nd</sup> Class Cummings is a long-time serving member of the Canadian Forces whose rank necessarily requires leadership and the promotion of the welfare of his troops and a fair approach in the administration of unit discipline and the respect of applicable orders. Once made aware that a specific sailor was again parking his vehicle in a non-reserved parking space after a user's complaint, a space other than the one he used himself regularly in the parking lot, he rather quickly dismissed his own violation in deciding to opt for a formal administrative measure against the faulty sailor. If Petty Officer 2nd Class Cummings felt that the parking rules were inadequate, he should have used the opportunity to discuss it with his superiors and propose an approach that would invite a review of the order if required and provide a workable and logical approach to the situation.

[12] The Court considers the following elements to be mitigating factors in the circumstances:

- (a) The offender's plea of guilty. This plea of guilty to the third charge is ultimately an acceptance of his responsibility and it is always a mitigating factor to be considered in sentencing an offender. However, it is noted that the offender's plea of guilty was not communicated at the earliest opportunity in order to have a meaningful benefit in the administration of this General Court Martial.

- (b) The absence of a conduct sheet. Petty Officer 2nd Class Cummings has no previous disciplinary or criminal record during his career of 23 years in the Canadian Forces.
- (c) The successful completion of an administrative measure imposed for the events that lead to the charge before the Court. The offender has completed, in August 2013, the period of probation that accompanied the administrative measure imposed on him in the form of a Recorded Warning.

[13] In conclusion, the Court finds that the sentence proposed by counsel is sufficient in the circumstances to achieve the objectives sought, namely denunciation of the conduct and deterrence as well as the maintenance of basic military discipline. The sentence is not contrary to public interest and would not bring the administration of military justice into disrepute.

**FOR THESE REASONS, THE COURT:**

[14] **FINDS** the offender, Petty Officer 2nd Class Cummings, guilty of the third charge for the offence of conduct to the prejudice of good order and discipline under s. 129 of the *National Defence Act*.

[15] **SENTENCES** the offender, Petty Officer 2nd Class Cummings, to a reprimand and a fine in the amount of 1500 dollars payable in 7 equal and consecutive monthly instalments of 200 dollars beginning on 31 August 2014 and one final instalment of 100 dollars. 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:**

Lieutenant-Colonel S.D. Richards and Major J.G. Simpson, Canadian Military Prosecution Service, Counsel for Her Majesty the Queen

Lieutenant-Colonel D. Berntsen, Directorate of Defence Counsel Services, Counsel for Petty Officer 2nd Class Cummings