COURT MARTIAL

Citation: *R v Bean*, 2011 CM 2015

Date: 20110620
Docket: 201069

Standing Court Martial

Canadian Forces Base Gagetown
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Ex-Private M.E. Bean, Offender

Before: Commander P.J. Lamont, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Mr Bean, having accepted and recorded your pleas of guilty to two charges: the first, an act to the prejudice of good order and discipline; and the third charge, altering a military document with intent to deceive, the court now finds you guilty of the first and third charges.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts to the case as described in the statement of circumstances and the other materials submitted during the course of this hearing as well as the submissions of counsel both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or de-

gree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases not, as the prosecutor pointed out, out of a slavish adherence to precedence, but because it appeals to our common sense of justice that like cases should be treated in like ways. But every case is different, in each case, the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society of which, of course, the Canadian Forces is a part, by fostering and maintaining a just, a peaceful, a safe and a law abiding community. But importantly, in the context the Canadian Forces these objectives include the maintenance of discipline, the habit of obedience which is absolutely essential to the effectiveness of an Armed Force. The goals and objectives also include deterrence of the individual so that the unlawful conduct of the offender is not repeated and general deterrence so that others will not be led to follow the example of the offender. Others goal include the rehabilitation of the offender and, which I consider particularly important in this case, the promotion of a sense of responsibility in the offender, and as well the denunciation of unlawful behaviour. One or more of these objectives will inevitably predominate in crafting a fit sentence in an individual case, but I do not lose sight of the fact that each of these goals calls for the attention of the sentencing court, and a fit sentence should reflect the wise blending of these goals tailored to the particular circumstances of the case.

[5] I told you when you tendered your pleas of guilty that section 139 of the *National Defence* Act prescribes the possible punishment that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment. Only one sentence is imposed upon an offender whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline. In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt as well as the sentence I am about to pronounce.

[6] The facts of this case are not complicated. While under sentence imposed at summary trial of confinement to barracks for a period of 14 days, the offender was bound by Canadian Forces Base Gagetown Standing Order 5.4.2 not to leave the confines of the base. Nevertheless, on 10 September 2010, the date alleged in the first charge, he left the base for apparently some hours to drink at a bar in Oromocto. Some six months later, on 18 March 2011, he reported for work in the afternoon and supplied his superiors with a sick chit having altered the time on the form to make it appear that he was at the Health Services Centre as of 0710 hours when in fact he had signed in at 1110 hours.

[7] On these facts, counsel before me jointly recommend a sentence of a reprimand and a fine in the amount of $800. As counsel have pointed out, the sentence to be pronounced is, of course, a matter for the court. But where as in this case, both parties agree on a recommended disposition that recommendation carries considerable weight with the court. The Courts of Appeal across Canada, including the Court Martial Appeal Court in the case of *Private Chadwick Taylor*[1], referred to by the prosecutor in the course of his address, those Courts have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[8] In this case I have considered both the aggravating and mitigating circumstances of the offences and of the offender that were referred to by counsel in the course of their addresses. It appears that in the course of a short military career that began in September of 2009 and ended last month with his release under an unfavourable release item, the offender has been found guilty of five offences of absence without leave and one offence of an act to the prejudice of good order and discipline. The present offences are generally of the same character; that is, they appear to have involved a wilful shirking of his duties as a member of the Canadian Forces in the furtherance of which the offender was prepared to falsify documentation in order to mislead his superiors.

[9] These conclusions amply demonstrate that the offender is wholly unsuited to military service. I believe the offender has probably come to that realization on his own. On all the circumstances of this case, both of the offence and of the offender, I find that I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest, and I therefore accept the joint submission.

[10] Stand up please, Mr Bean.

FOR THESE REASONS, THE COURT:

[11] **SENTENCES** you to a reprimand and a fine in the amount of $800, the fine is to be paid in equal monthly instalments of $80 each commencing 1 July 2011 and continuing for the following nine months, payment is to be made by cheque or certified bank draft, payable to the Receiver General of Canada and forwarded by registered mail to the Regional Military Prosecutions Office Atlantic, 6080 Young Street, suite 506, Halifax, Nova Scotia, B3K 5L2.

Counsel:

Major P. Rawal, Director Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Colonel T. Sweet, Directorate of Defence Counsel Services
Counsel for Ex-Private M.E. Bean

[1] 2008 CMAC 1