Citation: *R.v. Ordinary Seaman M.C. Welsh*, 2009 CM 3014

Docket: 2009-10

STANDING COURT MARTIAL
CANADIAN FORCES BASE HALIFAX
HALIFAX
NOVA SCOTIA

Date: 26 August 2009

PRESIDING: LIEUTENANT-COLONEL L-V D'AUTEUIL, M.J.

HER MAJESTY THE QUEEN

v.

ORDINARY SEAMAN M.C. WELSH
(Offender)

SENTENCE
(Rendered orally)

---

[1] Ordinary Seaman Welsh, having accepted and recorded a plea of guilty in respect of the third charge on the charge sheet, the court finds you now guilty of that charge. Consequently, the court directs that the proceedings be stayed on the second charge. The first charge being withdrawn by the prosecutor, the court has no other charge to consider for this court martial.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the sentence.

[3] The military justice system constitutes the ultimate mean to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct, or in a more positive way, see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusty and reliable manner, successful missions. It also

ensures that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It has been long recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to "impose a sentence commensurate with the gravity of the offences and the previous character of the offender," as stated at QR&O article 112.48 (2)(b).

[5] Here, in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence. They recommended that this court sentence you to a severe reprimand and a fine in the amount of $2, 500.

[6] Although this court is not bound by this joint recommendation, it is generally accepted, as mentioned by the Court Martial Appeal Court at paragraph 21 in its decision of *Private Taylor* v. *R.*, 2008 CMAC 1, quoting the decision of *R.* v. *Sinclair* at paragraph 17, that:

> [T]he sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[7] The Court has considered the joint submission in light of the relevant facts set out in the statement of circumstances and the agreed statement of facts, and their significance, and I've also considered the joint submission in light of the relevant sentencing principles, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code,* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following:

> Firstly, the protection of the public and the public includes the interests of the Canadian Forces;
>
> Secondly, the punishment of the offender;
>
> Thirdly, the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences;
>
> Fourthly, the reformation and rehabilitation of the offender;
>
> Fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; and

> Sixthly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
>
> The court has also considered the representations made by counsel and the documentation introduced.

[8] The protection of the public must be ensured by a sentence that would emphasize mainly specific and general deterrence. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from re-offending but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct. It is also important to say that some consideration must be given to denunciation and rehabilitation in this case.

[9] Here, the court is dealing with a pure military offence for having behaved in a disgraceful manner aboard HMCS IROQUOIS by urinating on a fellow sailor. This type of offence goes to the principle concerning the respect of the dignity and integrity of all persons among the crew you were part of in order for it to accomplish the Canadian Forces mission. However, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

[10] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors.

[11] The court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 93 of the *National Defence Act* for behaving in a disgraceful manner. This offence is punishable by imprisonment for a term not exceeding five years or to less punishment.

[12] About the subjective seriousness of the offence, the court considered three things as aggravating factors. First, the context of the offence. It occurred aboard a Canadian Forces ship while on operational deployment. In such context, mutual trust among sailors is essential and critical to operate and allow the ship to perform tasks and missions it is responsible for. If the crew cannot respond with efficiency to the orders given because sailors don't trust each other pursuant to behaviour such as the one you had while at sea, an essential mission and the life of some of them could be at stake.

[13] At the time of the offence, your conduct sheet disclosed that you were previously disciplined for having consumed alcohol while on duty. The facts of this case also clearly indicated to the court that you put yourself again in a situation where consumption of alcohol was an important factor that helped you to commit the offence for which you pleaded guilty. Despite the fact that you knew that alcohol was not good on your behaviour and that you were not allowed to do so because your mess privileges were suspended for a prior alcohol related incident, you drank anyway, which probably explains why you are here today. Nothing indicated to the court that you were forced to drink alcohol. Considering that you did that on your own, knowing the potential consequences on your behaviour, the court considers it as an aggravating factor.

[14] Second, by urinating on one of your fellow sailors, you violated his physical integrity. You physically harmed this person who, up to that time, was quietly confident that he could sleep without being awakened in such manner by somebody sharing the same space.

[15] Finally, the court considers the nature of the act. Urinating on people is a degrading and humiliating act that cannot be tolerated in any way in the Canadian Forces for any reason.

[16] The court considers that the following circumstances mitigate the sentence:

> Through the facts presented to this court, the court also considers that your plea of guilty is a genuine sign of remorse and that you are very sincere in your pursuit of staying a valid asset to the Canadian community and the Canadian Forces. It discloses the fact that you're taking full responsibility for what you did;
>
> Your age and your career potential as a member of the Canadian society. Being 27 years old, you still have many years ahead to contribute positively to the Canadian Forces and the society in general;
>
> The fact that it is an isolated incident, that there was no premeditation, and that no such similar conduct occurred after the commission of the offence. Reality is that your conduct did not impact on the operation of the ship you were on or on other people;
>
> The fact that you had to face this court martial. It has had already some deterrent effect on you and also on others. The court is satisfied that you will not appear before a court for a similar or any offence in the future;
>
> The fact that it looks like you are a good sailor on shore and in your trade. The course report introduced before this court shows that you are a skilled sailor with good deportment. However, being at sea appears to be a different thing and I suggest that you give some thought to this before going back on a ship for a long period of time;

[17] In consequence, the Court will accept the joint submission made by counsel to sentence you to a severe reprimand and a fine in the amount of $2, 500, considering that it is not contrary to the public interest and would not bring the administration of justice into disrepute.

[18] Ordinary Seaman Welsh, please stand up. Therefore, the Court sentences you to a severe reprimand and a fine in the amount of $2, 500 payable in ten monthly installments of $250 each commencing on 1 September 2009. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable the day prior to your release.

[19] The proceedings of this Standing Court Martial in respect of Ordinary Seaman Welsh are terminated.

LIEUTENANT-COLONEL L-V. D'AUTEUIL, M.J.

COUNSEL:

Major A.T. Farris, Regional Military Prosecutor, Central Region
Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant(N) M. Letourneau, Directorate of Defence Counsel Services
Counsel for Ordinary Seaman Welsh