Citation:*R. v. Corporal J.R.M. Grandmont*,2005CM43

Docket:S200543

STANDING COURT MARTIAL
CANADIAN FORCES BASE TRENTON
TRENTON, ONTARIO

Date: September 13, 2005

PRESIDING:LIEUTENANT-COLONEL M. DUTIL, MILITARY JUDGE

HER MAJESTY THE QUEEN
(Prosecutor)
v.
CORPORAL J.R.M. GRANDMONT
(Accused)

SENTENCE
(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] Corporal Grandmont, the Court having accepted and entered your plea of guilty to the 2nd count, the Court now finds you guilty of the 2nd count and it orders a stay of proceeding on the 1st count.

[2] Corporal Grandmont pleaded guilty to a charge laid under section 129 of the *National Defence Act* for an act to the prejudice of good order and discipline, namely having used violence against Corporal R.A. Hayward by using force in order to get him into a vehicle.

[3] In *R. v. Généreux*, the Supreme Court of Canada held that "[t]o maintain the

Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently." The Supreme Court noted that in the special context of military discipline, breaches of discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. These guidelines of the Supreme Court, however, do not allow a military tribunal to impose a sentence composed of one or more sentences that would go beyond what is required in the circumstances of the case. In other words, any sentence handed down by a court, whether civilian or military, must always represent the minimum necessary intervention.

[4] In determining the sentence it considers appropriate and minimum in this case, the Court has weighed the circumstances surrounding the commission of the offence as disclosed by the summary of circumstances, the truthfulness of which you have accepted, the documentary evidence filed with the Court, the witnesses who testified, including Master Warrant Officer Barrett and Sergeant Westcott, and your own testimony. The Court has also considered the submissions by counsel and the cases cited in the course of an analysis of the applicable sentencing principles.

[5] The evidence before this Court shows that on Saturday, April 24, 2004, you had been assigned to carry out some routine duties of inspection of logs and pressurization tests on a Hercules CC-130 aircraft accompanied by some of your colleagues, including Corporal Hayward. Corporal Hayward was instructed solely to certify the performance of the task by the other technicians and to ensure their performance while he had a medical condition that limited him to administrative duties. The task assigned to him was one of a purely administrative nature, moreover. The summary of the circumstances indicates that the members of the inspection team all went into the service area and got into a vehicle in the expectation that they would be going to the plane, with the exception of Corporal Hayward, who was absent from roll call. After some time, Corporal Hayward was noticed near the smoking area situated near the flight line. Corporal Grandmont went over to Corporal Hayward, who did not appear to be in a hurry to leave. Corporal Hayward then told Corporal Grandmont that he was not feeling well, that he was in pain and that he wanted to rest before going to perform the task. Corporal Grandmont knew that his colleague had a medical condition but he did not know, he says, what illness Corporal Hayward was suffering from. Corporal Grandmont then quickly became impatient as a result of Corporal Hayward's remarks, particularly because of Corporal Hayward's very limited role, which was to be present during inspections and certify that they had been made. A verbal escalation ensued between the two, until Corporal Grandmont met with a further refusal by Corporal Hayward. Corporal Grandmont then laid his arm on the shoulders of Corporal Hayward, who in turn pushed him back. The accused grabbed Corporal Hayward by the arm, and brought him back toward the vehicle to force him into it. Corporal Grandmont then forced Corporal Hayward to sit down and lean against the back of the front passenger seat, while holding him by the nape of the neck and under the chin for a few seconds, until the other members of the inspection crew separated them. Corporal Grandmont's actions resulted in considerable pain to Corporal Hayward during and after the incident, but it seems that he has had no physical aftereffects, although he was shaken, very disturbed and anguished by the events.

This incident was the subject matter of a police investigation which was completed less than two weeks later, on May 9, 2004. However, it was not until September 21, 2004 that charges were laid against Corporal Grandmont. On November 24, 2004, the unit's commanding officer asked the referral authority to hear the charge, but this file was not sent to the director of military prosecutions until March 1, 2005.

[6] The prosecution asks that the Court impose a fine of at least 1,000 dollars in order to ensure the maintenance of discipline. It argues that such a sentence would serve to satisfy the applicable sentencing principles in this case, namely, the protection of the public and the Canadian Forces, specific deterrence and the denunciation of Corporal Grandmont's action.

[7] The defence submits that the Court should impose a fine of 200 dollars or less accompanied by a minor penalty in the form of a warning. First off, the Court rejects the defence recommendation because it has no basis either in fact or in law. On the one hand, a fine of 200 dollars or less is not sufficient in the circumstances of this case to ensure maintenance of discipline and the interests of justice, considering both the subjective and objective seriousness of the act as charged, and even if the Court agrees to accord the greatest possible weight to the particular circumstances of the accused. On the other hand, although a court martial may impose a minor punishment under article 104.13 of the Queen's Regulations and Orders for the Canadian Forces (QR&O), the minor punishments that a court martial may impose are nevertheless subject to the restrictions imposed in the table added to article 108.24. But that table indicates that a warning is not an optional punishment accompanying a fine. Moreover, article 108.38 of the QR&O provides that a caution should be imposed where it is desired to give an offender a formal warning without other punishment. But this Court rejects any such possibility since such a sentence would clearly be insufficient in the circumstances of this case and it has already rejected the defence proposal to impose a fine of 200 dollars or less.

[8] When giving an accused an appropriate sentence for the misconduct he has committed and in regard to the offences of which he is guilty, certain objectives are addressed in light of the applicable sentencing principles, although these vary slightly from one case to another. The importance assigned to each of the objectives and principles must however be adapted or modulated to the circumstances of the case. To contribute to one of the essential objectives of military discipline, the maintenance of a professional, disciplined, operational and effective armed force, these objectives and principles may be set out as follows:

> First, protection of society, including the Canadian Forces;
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> Second, punishment and denunciation of the offender;
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> Third, deterrence of the offender, and of anyone, from committing the same offences;
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> Fourth, rehabilitation and reform of the offender;

> Fifth, proportionality to the gravity of the offences and the degree of responsibility of the offender;
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> Sixth, harmonization of sentences; and
>
> Finally, the Court will take into account the mitigating and aggravating circumstances related to the situation of the offender and the commission of the offences.

[9] In this case, the sentence will focus primarily on the punishment and denunciation of the offender. Contrary to the prosecution's submissions, the Court believes that the chances of a repeat offence by Corporal Grandmont are extremely low, if not non-existent. This is an isolated act that is out of character. The Court does not think it is necessary that the sentence focus on the principle of specific deterrence of the accused. The direct and indirect consequences that the verdict and the sentence have on the offender are of course always relevant, but the context of this case clearly shows that although the accused is responsible for the acts that brought him before this court, the wait for the trial itself has already had a significant impact on the accused's career path, even though the acts as charged are relative minor in the scale of seriousness of relatively similar crimes. It must be clearly understood that this Court does not question the justification that the service authorities had to exercise their discretion by putting the accused's application for the flight engineer's course on the back burner pending the results of the disciplinary process. It must be observed, however, that this decision has had a real impact on his career advancement, including some potential financial losses of some 600 dollars per month.

[10] In considering which sentence would be appropriate, the Court has considered the following aggravating factors and mitigating factors. The Court considers the following factors to be aggravating:

> First, the nature of the offence and the penalty provided by Parliament. The maximum sentence for the offence under section 129 of the *National Defence Act* is dismissal with disgrace from Her Majesty's service. This is an objectively serious offence.
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> Second, the aggressiveness and degree of violence that you displayed toward your colleague in the circumstances of the case. That was neither acceptable nor justifiable. Your sense of devotion and urgency to complete your assignment did not allow you to use any violence whatsoever in relation to your colleague Hayward. You may have doubted his sense of duty and his actual medical condition, but that did not authorize you to

> treat him as you did. You should know that your explanations that this was the first time such a situation had occurred for you and that you had not been formally educated to confront such situations do not hold water. You are an experienced soldier who is particularly bright and effective who knew or ought to have known that this is not the way to settle differences between colleagues or with subordinates. Your desire to complete the task assigned to you within the shortest possible period and at whatever cost prevented you from putting things in perspective and demonstrating some minimal flexibility and making adequate use of your judgment.
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> Third, the lack of compassion you displayed toward your colleague. Even if your superiors have described you as a good supervisor, your conduct toward Corporal Hayward on Saturday, April 24, 2004, did not necessitate such rigidity in relation to him. You did not try to find out or understand what the matter was with him and you did not try to find any solutions. The only important thing for you was the task at hand, and nothing was to block its completion within the shortest possible time. You should know that man is not a machine and that a certain amount of compassion and active listening are tools that are essential to any good supervisor. The completion of the task within the prescribed time limits must be evaluated in light of a set of factors including the human resources that are placed at our disposal. The Court is convinced, however, that your conduct would be different today.

In regard to the mitigating factors, the Court notes the following:

> First, your admission of guilt before this Court. In light of your testimony, the Court thinks that this admission is sincere and that it means that you regret your action. You unfortunately exceeded the allowed limits by physically laying into a colleague who did not seem to share — in your opinion at the time of the act as charged — your enthusiasm, your devotion or your sense of work well done in the performance of your day-to-day tasks. The Court accepts that you let yourself be carried away because you were impatient to complete the task assigned to you and that you lacked judgment in the way that you attempted to stimulate a colleague who, while physically weakened, was not stimulated as much as you to carrying out his duties.
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> Second, your performance before the events and after the events, that is, up until now. The evidence before this Court allows no uncertainty as to your qualities, both professional and personal. You are an avionics technician with consistently exemplary skills and performance. Your devotion to and your enthusiasm for your work have earned you the

highest praise from your superiors and they are a constant source of inspiration to your colleagues, judging from the evidence that has been filed in this court. There is no doubt that the incident of April 24, 2004 is out of character. You were no doubt impatient. That was permissible and explainable, but it cannot serve as an excuse. The Court can understand that individuals of your quality may sometimes be frustrated in finding, rightly or wrongly, that the work ethic of some colleagues is deficient or doubtful. Unfortunately, it is the verbal and physical escalation that followed that was not acceptable. Your enthusiasm for your work and your sense of duty did not entitle you to treat your colleague as you did. The Court finds from your testimony that you have learned your lesson and that you will turn to a superior to manage this kind of situation in the future instead of trying to resort to force to persuade a colleague to discharge his duty promptly.

Third, the fact that you have apparently missed two opportunities to take a flight engineer's course since the incidents because of the disciplinary proceedings against you. The record indicates that this skill is available to those who are most deserving and that significant financial advantages in the amount of 600 dollars or so per month are attached. It seems that this opportunity will be offered to you in January 2006, although you were to begin this specialized training in April 2005. This is an important albeit indirect consequence in the circumstances of this case.

Fourth, the Court notes the period that has elapsed since the commission of the offence for a matter that, when all is said and done, was not very complex.

[11] Corporal Grandmont, please stand up. For these reasons, the Court sentences you to a fine in the amount of 300 dollars. Take Corporal Grandmont out.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major G. Roy, Eastern Region Military Prosecutor
Counsel for the prosecution
Lieutenant-Commander M. Reesink, Director of Defence Counsel Services

Counsel for Corporal J.R.M. Grandmont