



COURT MARTIAL

Citation: *R v Parent*, 2014 CM 2012

Date: 20140526

Docket: 201387

Standing Court Martial

Canadian Forces Base Gagetown
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Corporal M. Parent, Offender

Before: Colonel M.R. Gibson, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Corporal Parent, having accepted and recorded your plea of guilty to the second charge, the court now finds you guilty of this charge. The court must now determine a just and appropriate sentence in this case.

[2] In doing so the court has considered the principles of sentencing that apply in the military justice system, the facts of the case as disclosed in the evidence introduced for the court's consideration, including the Summary of Circumstances introduced into evidence as Exhibit 6, as well as the submissions of counsel for the prosecution and the defence.

[3] The facts of this case, as disclosed in the Summary of Circumstances, may be briefly summarized as follows. Corporal Parent is a weapons technician currently posted at Canadian Forces Base (CFB) Gagetown. He has been a member of the Regular Force for six years. He has a child with Ms. Isabelle Dostie, a son born in 2006. Dur-

ing his training, Corporal Parent submitted the applicable forms to have his marital status changed from single to common law with Ms. Dostie, despite the fact that they remained separated and were not in a common law relationship. On 6 January 2009, Corporal Parent began claiming separation allowance, notwithstanding that he was not in fact in a common law relationship. Each month, Corporal Parent continued to fraudulently claim IR and separation benefits by filling out, signing, and submitting CF52 General Allowance Claims. He certified on each claim that he had incurred the claimed expenses, that he had a dependant, and that there was no separation with intent during the period covered by the claim. The Government of Canada deposited the claimed money into Corporal Parent's bank account and he took it, knowing that he was not actually entitled to it.

[4] Between 6 January 2009 and 17 April 2012, Corporal Parent fraudulently claimed the sum of \$46,773, and took money that was the property of the Government of Canada without colour of right.

[5] Out of the total of \$46,773, \$1260 was recovered in August 2012 for two outstanding IR advances. None of the remaining \$45,513 has yet been restituted to the Government of Canada by Corporal Parent.

[6] In the spring of 2012, the IR Coordinator at CFB Gagetown became suspicious as to Corporal Parent's true status. On 22 May 2012, Corporal Parent confessed to a co-worker, and subsequently that same day to his supervisor Sergeant Gagnon, that he had been fraudulently taking money to which he was not entitled, by claiming IR and separation benefits which he was not entitled to.

[7] On 23 May 2012, Corporal Parent voluntarily attended at the CFB Gagetown MP Detachment and confessed in the course of a cautioned interview that he had fraudulently claimed IR and separation benefits to which he was not entitled, that he was not in a common law relationship, and that he took the money which he fraudulently claimed.

[8] Corporal Parent has now pleaded guilty today to one count of theft over \$5,000 contrary to section 334 of the *Criminal Code*.

[9] The fundamental purposes of sentencing by service tribunals in the military justice system, of which courts martial are one type, are: to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and to contribute to respect for the law and the maintenance of a just, peaceful, and safe society. In short: to promote operational effectiveness, and to do justice.

[10] The fundamental purposes are achieved by the imposition of just sanctions that have one or more of the following objectives: to promote a habit of obedience to lawful commands and orders; to maintain public trust in the Canadian Forces as a disciplined armed force; to denounce unlawful conduct; to deter offenders and other persons from

committing offences; to assist in rehabilitating offenders; to assist in reintegrating offenders into military service; to separate offenders, if necessary, from other officers or non-commissioned members or from society generally; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community.

[11] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[12] Other sentencing principles include: a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances; a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances; a sentence should be the least severe sentence required to maintain discipline, efficiency and morale; and any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[13] In the case before the court today, I must determine if the sentencing purposes and objectives would best be served by deterrence, denunciation, rehabilitation, or a combination of these factors.

[14] The court must impose a sentence that is of the minimum severity necessary to maintain discipline, efficiency and morale. Discipline is that quality that every Canadian Forces member must have that allows him or her to put the interests of Canada and of the Canadian Forces before personal interests. This is necessary because members of the Canadian Forces must promptly and willingly obey lawful orders that may potentially have very significant personal consequences, up to injury or even death. Discipline is described as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training and practice, it is something that must be internalized, as it is one of the fundamental prerequisites to operational effectiveness in any armed force. One of the most important components of discipline in the military context, is self-discipline. This includes resisting the temptation to make fraudulent claims for benefits to which one is not entitled. The actions of Corporal Parent demonstrate that this is an area in which he has been deficient.

[15] The court considers that the aggravating factors in this case are the following:

- a. the objective gravity of the offence to which Corporal Parent has pleaded guilty. The offence of theft over \$5,000 under the *Criminal Code* is punishable by Imprisonment for up to 10 years
- b. the pre-meditation and deliberate action that was required to initiate the fraudulent claims; this was not an offence committed on the spur of the moment;

- c. the protracted period of time for which the offence continued, some 39 months. This means that 39 times over that period, Corporal Parent had to repeat his fraudulent act, and certify the legitimacy of what he was claiming. He persisted in his misrepresentation and dishonesty on each occasion. He did not take the multiple opportunities that this requirement for monthly reiteration of the claim presented, to desist in the dishonesty;
- d. the fact that the money was effectively stolen from his employer, the Canadian Forces;
- e. the significant sum of money obtained through dishonesty, over \$46,000; and,
- f. the fact that restitution has not been made for the great bulk of the money fraudulently obtained, still over \$45,000, and that Corporal Parent has not disgorged the benefit of his dishonesty.

[16] The mitigating factors in this case include the following:

- a. first and foremost, that Corporal Parent has pleaded guilty to the offence. This is always an important mitigating factor, reflecting that the offender has accepted responsibility for his actions;
- b. secondly, the apology to the Canadian Forces and to his unit offered by Corporal Parent in court, and what struck the court as his genuine expression of remorse for his dishonesty and commission of the offence;
- c. thirdly, the absence of a conduct sheet or any other indication of prior convictions; and
- d. fourthly, the positive assessment of Corporal Parent's work performance given by his supervisor Sergeant Gagnon, and his indication that in respect of the likely forthcoming administrative review of Corporal Parent's retention in the Canadian Forces, that Sergeant Gagnon would be supportive of Corporal Parent's retention in the Canadian Forces. Sergeant Gagnon stated in his testimony that "he saw possible redemption in him."

[17] The principles of sentencing that the court considers should be emphasized in the present case are denunciation, and general and specific deterrence. Confidence in the honesty, integrity, discipline, maturity and good judgment of members of the Canadian Forces, both by the general public and other Canadian Forces members, is critical to the effectiveness of the Canadian Forces in the fulfilment of its important functions. Moreover, the proper functioning of the extensive system of financial benefits that members of the Canadian Forces are entitled to in support of the performance of their

duties, and to mitigate the hardships that service to Canada can sometimes inevitably visit upon them, relies upon the integrity of members. Dishonesty in the claiming of those benefits can have an adverse impact on other members, and require the allocation of scarce administrative and investigative resources to vet and investigate. Such theft is not a victimless crime, either in law, or in its actual impact on other Canadian Forces members.

[18] Members of the Canadian Forces are rightly held to a very high standard. The actions of Corporal Parent constitute a significant derogation from those standards. He must be specifically deterred from ever repeating these actions, and other members of the Canadian Forces must also understand that such actions are simply not tolerable, and be deterred from committing them.

[19] In the circumstances of this case, the court considers that a custodial sentence is warranted, and would be the minimum sentence necessary to maintain discipline, efficiency and morale, as well as to accord with the parity principle of sentencing. The question then becomes, which type of custodial sentence: imprisonment or detention?

[20] The prosecution and defence have made a joint submission for a sentence of 90 days detention.

[21] In the case of a joint submission, the question that the court must ask itself is not whether the proposed sentence is one that the court would have awarded absent the joint submission; rather, the court is required to consider whether there are cogent reasons to depart from the joint submission; that is, whether the proposed sentence is unfit, unreasonable, would bring the administration of justice into disrepute, or be contrary to the public interest.

[22] I have carefully canvassed all of the cases submitted to me by counsel as precedents for sentencing. The submissions of counsel in this case are consistent with those particular precedents.

[23] The court is also aware, however, that there are sentencing precedent cases for similar types of offences for which the punishment of imprisonment was given.

[24] However, Corporal Parent, you are still young, and you appear to be a person who can learn from this sad episode in your life. The court was impressed with the testimony of Sergeant Gagnon on your behalf. While the facts of this case, in the estimation of the court, require a custodial sentence to serve the need for denunciation and deterrence, I also believe that the facts warrant the imposition of a sentence that will assist in your rehabilitation and leave open your possible reintegration for further service in the Canadian Forces, should that ultimately be the assessment of the responsible service authorities.

[25] The court does not consider that the proposed sentence is unfit, unreasonable, would bring the administration of justice into disrepute, or be contrary to the public in-

terest. Thus, the court will accept the joint submission of counsel for the prosecution and defence as the sentence.

FOR THESE REASONS, THE COURT:

[26] **FINDS** you guilty of the second charge on the charge sheet. The first, third and fourth charges have been withdrawn by the prosecution.

[27] **SENTENCES** you to the punishment of detention for 90 days. This sentence was pronounced at 1445 hours, 26 May 2014.

Counsel:

Major K. Lacharite, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Commander B. Walden, Defence Counsel Services
Counsel for Corporal Parent