

Citation: *R. v. Private C.R. Stack*, 2006 CM 22

Docket: S200622

**STANDING COURT MARTIAL
CANADA
NEWFOUNDLAND AND LABRADOR
CANADIAN FORCES STATION ST. JOHN'S**

Date: 7 September 2006

PRESIDING: COLONEL M. DUTIL, C.M.J.

HER MAJESTY THE QUEEN

v.

**PRIVATE C.R. STACK
(Offender)**

SENTENCE

(Rendered orally)

[1] Private Stack, please stand up. The court, having accepted and recorded your pleas of guilty to the first, second, third, fifth, seventh, tenth and eleventh charge, the court finds you guilty of these charges. You may be seated.

[2] The purpose of a separate system of military tribunals is to allow the armed forces to deal with matters that pertain directly to the discipline, efficiency, and morale of the military. The Supreme Court of Canada has recognized that breaches of military discipline must be dealt with speedily, and frequently punished more severely, than would be the case of a civilian engaged in a similar conduct. However, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] In determining sentence, the court has considered the circumstances surrounding the commission of the offences as revealed by the statement of circumstances, read by the prosecutor, that you accepted as conclusive evidence. The court has also considered the documentary evidence provided to the court, as well as the testimonies heard during the sentencing procedure; namely, the testimony of your mother, as well as of your treating psychiatrist. This court has examined the totality of this evidence in light of the applicable principles of sentencing, including those set out in section 718, 718.1 and 718.2 of the *Criminal Code* when they are not incompatible with

the sentencing regime provided under the *National Defence Act*. The court has also considered the representations made by counsel, including the case law provided to the court.

[4] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case-to-case, but they must always be adapted to the circumstances and to the offender. In order to contribute to one of the essential objectives of military discipline; that is, the maintenance of a professional and disciplined armed force that is operational, effective, and efficient within a free and democratic society, the sentencing principles and objectives could be listed as: firstly, the protection of the public, and this includes the Canadian Forces; secondly, the punishment and the denunciation of the unlawful conduct; thirdly, the deterrence of the offender and other persons from committing similar offences; fourthly, the separation of offenders from society, including from members of the Canadian Forces, where necessary; fifthly, the rehabilitation of offenders; sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; seventhly, the sentence should be similar to sentences imposed on similar offenders, for similar offences, committed in similar circumstances; eighthly, an offender should not be deprived of liberty if less restrictive punishment, or a combination of punishments, may be appropriate in their circumstances; and finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

[5] In this case, the protection of the public must be achieved by a sentence that will emphasize general deterrence, punishment and denunciation, as well as specific deterrence. The sentence must also assist to rehabilitate the offender. In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors. The court considers as aggravating the objective seriousness of the offences for which you have pleaded guilty, and their prescribed maximum punishment: the offence of uttering a threat, contrary to section 264.1 of the *Criminal Code*, carries a maximum punishment of five years' imprisonment; section 266 of the *Criminal Code* provides for a similar maximum punishment for the crime of common assault, where the offence of assault causing bodily harm, under paragraph 267(b) of the *Criminal Code* is punishable to a maximum of ten years' imprisonment; as to the offence of causing a fire in a defence establishment, contrary to section 113 of the *National Defence Act*, any person convicted of that offence is liable to imprisonment for life, if the offence was committed wilfully, which is the case in this particular instance. The court considers also, as aggravating, the fact that the threats and assaults were committed against your comrade soldiers who must always be able to trust yourself and rely on each member of their unit. The court considers aggravating the fact that the threats were not limited to a single utterance made spontaneously, but were part of a broader episode of intimidation through violent

behaviour which was first directed at one of your superiors before it expanded to fellow privates and corporals in order to dissuade them from speaking to authorities and testify against you with regard to your unlawful behaviour. I refer to the statement of circumstances that illustrates the seriousness of the threats and their clear purpose of intimidation. The court also considers aggravating the fact that you did not limit yourself to intimidation by making threats, but made clear to your fellow soldiers that you were extremely serious in carrying those threats using physical violence against two fellow soldiers, including setting one of your comrade's bed and shirt on fire when one refused to lend you his cellular telephone. There's also the fact that you wilfully set a fire in the quarters of one of your fellow soldiers, Private Murphy, which was clearly the carrying of a threat. This passage of the statement of circumstances illustrates why your fellow soldiers had every reason to fear for their safety, and I quote:

On arrival at CFB Gagetown, Pte Stack again asked Pte Murphy to use his cellular telephone, telling him that if he had to go to use a pay phone he was going to kill Pte Murphy. When Pte Murphy refused to provide his cellular telephone, Pte Stack said that he was going to burn Pte Murphy's bed and his belongings. Pte Stack entered the single quarters at Building L-103, poured glue onto Pte Murphy's bed, and lit it on fire. Pte Stack went to Pte Murphy's locker, took a shirt that was hanging there, and lit it on fire. Pte Stack later placed a padlock in a sock, and went outside of the single quarters looking for Pte Murphy, saying he was going to kill him.

Finally, the court considers as aggravating the fact that two days later, and as you were sober this time, you approached one of your fellow soldiers and threatened him again if he made any statement to the police against you.

[6] The court considers that the following circumstances mitigate the sentence. First, the pleas of guilty. The fact that you have pleaded guilty to most of the charges laid against you, and particularly the most serious ones, certainly mitigate the sentence. In light of the circumstances of this case, the court is satisfied that this is a positive step towards the acceptance of your degree of responsibility for your outrageous conduct towards other service persons. The next factor is your age. You were only 20 years old when you committed the offences for which you have entered pleas of guilty. At 21 years of age, this court believes that you have the potential to contribute positively to the society in general, if not in the Canadian Forces. Third, I consider the fact that you had no previous criminal or disciplinary record, which brings the court to another important factor in this case, is that of your personal and family situation.

[7] The evidence before this court is also particularly convincing to demonstrate that you have taken serious steps to be an asset to society and move on with your life over the last year. First, you have been seeking medical help in consulting a psychiatrist, and Dr. Angel's testimony indicates that you are doing very well and that

your prognosis is good in relation with your adjustment disorders. Second, you have found good employment in Alberta. The testimony of your mother described, at length, what your family had to endure and suffer over the last years, both emotionally and financially. Your parents lost everything because of your father's addiction to gambling. They declared bankruptcy, and, ultimately, divorced. According to her and your psychiatrist, you had developed a significant level of anger and resentment towards your father as a result. She further testified that you were also affected by the recent loss of your grandfathers, who were close to you, a few years ago. Although the loss of loved ones is an unfortunate and ultimate reality when they have reached the pinnacle of their own life, it is always a fatality that is difficult to accept with serenity. The court was extremely touched by the testimony of your mother. She is an extremely courageous and caring person, who loves and supports her son endlessly. Financially ruined, she undertook to raise your own son in your absence and that of your son's mother, who is also trying to get her life in order. It is unfortunate that any sentence that this court may impose would, inevitably, impact on your mother and your son, but it must be made clear that you are ultimately responsible for your actions.

[8] The court considers that your financial and employment situation should also mitigate the sentence. The evidence before this court establishes that your new employment in Alberta was salutary for you for two reasons: financially and psychologically. It allows you to support your child and to contribute as an active member of society, and it's also very important for your own self-esteem. The evidence indicates that you are a reliable employee, who will be re-hired as soon as being able to return, if forced to take a leave of absence. It demonstrates that your employer is more than fully satisfied with your performance. However, it is fair to say that your financial situation is not likely to improve significantly in the near future. You have been involved, and slightly injured, in a very serious car accident on 29 August. Your vehicle is a total loss, and the court understands that you may be held responsible for the fatal accident and that your insurance company will not cover your own damages.

[9] It's also very important here to mention as a mitigating factor, and it is an important one, the delay in bringing this matter to trial. Exhibit 13 highlights the significant milestones, starting with the original Record of Disciplinary Proceedings dated 27 June 2005, to the granting of a motion from defence counsel to reschedule the trial on 7 July 2006. Defence counsel strongly argued that this delay, combined with the impact of a custodial sentence on the offender, justifies that the court suspend the execution of any custodial sentence, should it impose such punishment. There is no doubt that this upcoming court martial had a significant impact on your level of stress and anxiety over this period, which added to the other serious stressors you had to endure, as it was expressed by your mother and explained by Dr. Angel. Therefore, the court considers that the post-charge delay is, indeed, an important mitigation factor in this case.

[10] There's also the fact that you will likely be released from the Canadian Forces, for the very reasons that brought you before this court, in the near future. In the context of this case, this is important with regard to the deterrent effect required for this type of conduct. And finally, the fact that alcohol was a significant contributor to your actions during the early hours of 7 May 2005. However, this must be tempered with the fact that you nevertheless pursued your threatening conduct two days later in order to prevent your comrades from testifying against you where alcohol could not be used as an excuse.

[11] Although every case must be decided based on its own merit, the court agrees with the prosecution that denunciation, general, and specific deterrence are the most important objectives in the context of this case and of the offender. However, any sentence imposed should not unduly and unfairly compromise the rehabilitation of a young adult like Private Stack. The prosecution recommends that this court should impose a punishment of imprisonment for a period of seven to twelve months. In addition, it was submitted that this punishment should not be suspended as it would adversely affect public confidence in the military justice system, considering the particular circumstances of this case. Counsel for the defence has argued that a combination of non-custodial punishments would meet the requirements of maintenance of discipline and justice. In addition, the defence suggested that, should the court conclude that a custodial sentence is justifiable, the carrying into effect of the punishment should be suspended as it would ruin the necessary rehabilitative aspect of the sentence.

[12] In *R. v. Gladue* (1999), 133 C.C.C. (3d) 385, the Supreme Court of Canada stated that imprisonment should be the penal sanction of last resort. This was recently reiterated by the Court Martial Appeal Court in *R. v. Baptista*, Neutral Citation: 1, delivered on 27 January 2006. It is abundantly clear that imprisonment should be used only where no other sanction, or combination of sanctions, is appropriate to the offence and to the offender. In order to craft a fair and appropriate punishment, the court has closely examined the other punishments, and combination of punishments, under section 139 of the *National Defence Act*, to ensure the protection of the public by a sentence that would promote the need for punishment and denunciation of the offender, as well as general and specific deterrence, without unduly compromising the important rehabilitative aspect of the sentence in the particular circumstances of this offender, although it is definitely not the primary objective in this case.

[13] The court is satisfied that a proper and fit sentence in this case must include a period of incarceration in the form of imprisonment. The objective seriousness of these offences, but more particularly the circumstances in which they were committed, are so severe that it must impose the punishment of last resort to effectively meet the required sentencing principles and objectives, as well as maintaining discipline and confidence in the administration of military justice.

[14] The particular circumstances of Private Stack are compelling. If this court was faced with a combination of less serious charges, with less outrageous circumstances surrounding the commission of the offences, it could have considered the adequacy of suspending the execution of a sentence of imprisonment in light of the personal circumstances of the offender and the very long post-charge delay. However, I agree with the recommendation of the prosecution that a lengthy period of incarceration is warranted in the circumstances, and that the suspension of such punishment would affect public confidence in the military justice system that is part of the broader Canadian justice system.

[15] In reaching this conclusion, the court has considered extensively the entire testimony of Dr. Angel, including his opinion concerning the effect of a custodial sentence on Private Stack in the context of the likelihood that he would be re-hired by his employer after serving such punishment. After a thorough review of the applicable sentencing principles and objectives, the circumstances surrounding the offences, the importance of the post-charge delay, including the impact it already had on Private Stack, as well as the particular circumstances of the offender, the court considers that the length of the custodial sentence should be significantly reduced rather than suspended. In normal circumstances, the court would have imposed a sentence of imprisonment for a period of five months. The court, however, recognizes that, over the recent months, you have displayed genuine efforts to become a responsible young adult, and it is unfortunate that you were just involved in a tragic car accident that can only add to the reality of your fragile environment. Despite according the best weight possible to all the mitigating factors present in your case, there still must be serious consequences for you, further to this difficult balancing exercise, which is part of sentencing. Although the sentence that this court will impose should not discourage you to continue and look forward, it remains an important step in taking responsibility for your actions as an adult. This court believes that this sentence should not only denounce your conduct and deter you and others who lose control and use violence in the manner described in the statement of circumstances, it is convinced that it is extremely lenient, considering your particular circumstances.

[16] Private Stack, please stand up. For these reasons, the court sentences you to imprisonment for a period of 60 days. You may be seated. In addition, the court makes the following orders, namely: An order authorizing the taking of bodily substances for forensic DNA analysis pursuant to section 196.14, after having been found guilty of a primary designated offence, that is assault causing bodily harm, an offence punishable under section 130 of the *National Defence Act*, contrary to paragraph 267(b) of the *Criminal Code*; and an order to prohibit you, for a period of 10 years starting today and ending on 6 September 2016, from possession of any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, pursuant to section 147.1 of the *National Defence Act*.

[17] This sentence was passed at 1652 hours, on 7 September 2006.

COLONEL M. DUTIL, C.M.J.

Counsel:

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