



COURT MARTIAL

Citation: *R v Gardiner*, 2013 CM 3009

Date: 20130312

Docket: 201271

Standing Court Martial

HMCS PREVOST
London, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Petty Officer 1st Class J.T. Gardiner, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Petty Officer 1st Class Gardiner, having accepted and recorded a plea of guilty in respect of the third charge on the charge sheet, the court now finds you guilty of this charge. Considering that the fourth charge is alternative to the third charge, then in accordance with subparagraph 112.05(8)(a) of the *Queen's Regulations and Orders for the Canadian Forces*, the court directs that the proceedings be stayed on the fourth charge. Also, considering that the court previously found you not guilty of the first and second charge, following the fact that the prosecution decided to call no evidence on those two charges, then the court is left with no other charge to deal with.

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

[3] Considering that the military justice system is a fundamental element of the military activity, it can be considered as an ultimate means to enforce discipline. 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 trusting and reliable manner, successful missions. It also ensures that the 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 long been recognized that the purpose of a separate system of military justice or tribunal 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 the morale among the Canadian Forces (see *R v Généreux* [1992] 1 SCR 259 at 293). 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.

[5] Here, in this case, the prosecutor recommended that this court sentences you to a reprimand and a fine between \$2,500 to \$3,500 in order to meet justice requirements. Your defence counsel suggested that only a fine between \$200 and \$500 would achieve the same purpose.

[6] Imposing a sentence could be a difficult task for a judge, especially in this case. As the Supreme Court of Canada recognized in *Généreux* in order:

To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

It emphasized that in the particular context of military justice:

Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[7] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- a. to protect the public, which includes the Canadian Forces;
- b. to denounce unlawful conduct;
- c. to deter the offender and other persons from committing the same offences;
- d. to separate offenders from society where necessary; and

- e. to rehabilitate and reform offenders.

[8] When imposing sentences, a military court must also take into consideration the following principles:

- a. a sentence must be proportionate to the gravity of the offence;
- b. a sentence must be proportionate to the responsibility and previous character of the offender;
- c. a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- d. an offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate in the circumstances. In short, the court should impose a sentence of imprisonment or detention only as a last resort as established by the Court Martial Appeal Court and the Supreme Court of Canada decisions; and
- e. lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] I came to the conclusion that in the particular circumstances of this case, sentencing should place the focus on the objectives of general and specific deterrence. It must be said that general deterrence means that the sentence imposed should not deter simply the offender from re-offending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct.

[10] Here the court is dealing with a military offence about wilfully making a false statement in a document made by the offender that was required for official purposes.

[11] On 17 and 18 March 2012, Petty Officer 1st Class Gardiner acted as the Range Safety Officer and Training Chief for personnel of the HMCS PREVOST. In these capacities, Petty Officer 1st Class Gardiner conducted range qualifications on the C7A rifle at the Cedar Spring Training Range, London, Ontario. Leading Seaman Renaud, a member of the same unit as the offender, attended the range qualifications on 17 March 2012. She did not attend the range qualification the following day on 18 March 2012.

[12] On 17 March 2012, Petty Officer 1st Class Gardiner spoke to Leading Seaman Renaud and mentioned to her that he would make arrangements for her to qualify at a later date. Leading Seaman Renaud needed this qualification in order to attend the in-house portion of her Primary Leadership Qualification course.

[13] On 21 March, Petty Officer 1st Class Gardiner sent an email to Lieutenant(N) Barrette, the training officer for the HMCS PREVOST, listing the scores of the personnel on the 18 March range. Included on that list was Leading Seaman Renaud's name.

[14] This document was to be used by Lieutenant(N) Barrette for an official purpose, namely the entry of the individual scores into Naval Records Information Management System of the individual members so listed on the document. Lieutenant(N) Barrette was aware himself that Leading Seaman Renaud did not attend the range on 18 March. He made inquiries of other personnel who had attended the range.

[15] On 21 March, Petty Officer 1st Class Gardiner approached Leading Seaman Renaud at the ship's office window and mentioned that she had passed her qualifications and that she need not worry.

[16] On 22 March, Lieutenant(N) Barrette sent an email to Petty Officer 1st Class Gardiner stating that he was not aware that Leading Seaman Renaud returned at the range on Sunday. He then requested Petty Officer 1st Class Gardiner to advise him on this matter. Petty Officer 1st Class Gardiner did not respond to the email, but met with Lieutenant(N) Barrette on 26 March. When Lieutenant(N) Barrette inquired about the discrepancy between the email and his personal knowledge, Petty Officer 1st Class Gardiner admitted that Leading Seaman Renaud was not present for the 18 March range qualification.

[17] This type of offence is directly related to some Canadian Forces members' ethical obligations such as honesty, integrity, and loyalty. For a non commissioned member, as it is for an officer, being trustworthy at all times is more than essential for the accomplishment of any task or mission in an armed force, whatever is the function or the role they have to perform.

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

- a. the court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 125 of the *National Defence Act*, which is punishable by imprisonment for a term not exceeding three years or to less punishment; and
- b. secondly, the subjective seriousness of the offence, which consists of two aspects:
 - i. The first aggravating factor from a subjective perspective is the breach of trust you disclosed by your actions. From somebody at your rank and with your extensive experience, you have been, in your military life, exposed to various situations that should have told you to do better. The way you acted was disappointing for those who were part of your work environment and they had greater expecta-

tions from somebody like you, as it is from the public in general from their seamen, airmen and soldiers. As a senior non commissioned officer, expectations are very high and when somebody like you does such a thing, disappointment is also very high.

- ii. Your actions also disclosed some premeditation, which is an aggravating factor that the court shall consider. You told to Leading Seaman Renaud that she was qualified and further to that, you confirmed that fact through an email used for an official purpose. Then you deliberately and wilfully planned to convey false information use for an official purpose to the chain of command regarding the weapons qualification of a Canadian Forces member.

[19] There are also mitigating factors that I considered:

- a. there is your guilty plea. Through the facts presented to this court, the court must consider your guilty plea as a clear, genuine sign of remorse and that you are very sincere in your pursuit of staying a valued asset to the Canadian Forces and the society in general, and it also disclosed the fact that you are taking full responsibility for what you did;
- b. the absence of any annotation on your conduct sheet. There is no indication of the commission of any similar offence, military offence or criminal offence, in relation or not to what happened;
- c. your performance and potential during your military service. Clearly, you deserve great respect for what you have done so far in your military career. Your records of service clearly reflect this fact and it is something that the court must consider. You are well respected in your trade and as an expert on many subjects;
- d. the fact that it is an isolated incident, out of character from somebody like you. No matter what were you motives for acting the way you did, it is clear that it was very unusual for somebody like you to do such thing, especially considering that you gain nothing from a personal perspective; and
- e. the fact that you had to face this court martial, which was announced and accessible to the public and which took place in the presence of some of your colleagues and your peers, has no doubt had a very significant deterrent effect on you and on them. The message is that the kind of conduct that you displayed will not be tolerated in any way and will be dealt with accordingly.

[20] The appropriate penalties for an offence of this nature and in such context usually range from a severe reprimand to reprimand and a fine, and to only a fine in some cases.

[21] The court must reiterate that a reprimand is a serious penalty in a military context. As expressed in the Oxford Dictionary, it is a formal expression of disapproval regarding the conduct or actions of somebody. On the scale of penalties, it is above a fine regardless of the amount. It reflects the doubt cast on the military member's commitment at the time the offence was committed. It reflects the gravity ascribed to the offence, but also the offender's real hope for rehabilitation.

[22] The behaviour you disclosed through the facts of this case demonstrates that your misconduct was serious to some degree. You showed a failure to the professional standards of integrity expected from somebody of your rank and experience in the Canadian Forces. You misled a subordinate about her qualification and falsely made written representations to the same effect to an officer.

[23] The set of circumstances of this case convinced me that considering the very nature of the reprimand as a punishment, it would be appropriate to impose on the offender a sentence of this nature. In fact, considering the nature of the offence, the applicable sentencing principles including sentences imposed on similar offenders for similar offences committed in similar circumstances by military tribunals, the aggravating and the mitigating factors mentioned above, I am of the opinion that a reprimand and a fine would appear as the appropriate and the necessary minimum punishment in this case.

[24] About the amount of the fine, the court does not consider that imposing a large amount, as the one suggested by the prosecution, would really reflect a sentence commensurate with the gravity of the offence and the previous character of the offender, especially in a context where there is a combination of a fine with a reprimand. The court concludes that a fine in the amount of \$200 would better represent the real meaning of this principle. As often expressed by military judges imposing a sentence, a fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of the particular case. The court does consider as an appropriate minimum and fit punishment to impose a combination of a reprimand with a fine in the amount of \$200.

FOR THESE REASONS, THE COURT:

[25] **FINDS** you guilty of the third charge for an offence under section 125 of the *National Defence Act*.

[26] **DIRECTS** that the proceedings be stayed on the fourth charge.

[27] **SENTENCES** you to a reprimand and a fine in the amount of \$200, payable immediately.

Counsel:

Major T.E.K. Fitzgerald, Canadian Military Prosecutions Service
Counsel for Her Majesty the Queen

Major S.L. Collins, Directorate of Defence Counsel Services
Counsel for Petty Officer 1st Class J.T. Gardiner