



COURT MARTIAL

Citation: *R v Scott*, 2012 CM 2013

Date: 20120924

Docket: 201221

Standing Court Martial

Canadian Forces Base Kingston
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Warrant Officer D.J. Scott, Offender

Before: Commander P.J. Lamont, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Warrant Officer Scott, having accepted and recorded your pleas of guilty to two charges, both charges of an act to the prejudice of good order and discipline, being the first and third charges in the charge sheet, and having considered the alleged and admitted facts, this court now finds you guilty of the first charge and of the third charge.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have, as well, considered the facts of the case as disclosed in the evidence and materials submitted during the course of the sentencing hearing, as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit a proper sentence in each individual case. A sentence should be

broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous, similar cases, not out of a slavish adherence to precedent but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence, the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment, and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, of which, of course, the Canadian Forces is a part, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force.

[5] The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour. One or more of these objectives will inevitably predominate in crafting a fit and just sentence in an individual case; yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court and a fit and just sentence should reflect a proper blending of these goals, tailored to the particular circumstances of the case.

[6] As I told you when you tendered your pleas of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[7] In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to pronounce.

[8] The facts of the offences are set out in the Statement of Circumstances, Exhibit 7. Based on this evidence and the testimony of Warrant Officer Scott before me, I make the following findings of fact:

- (a) Warrant Officer Scott was the chief clerk at the Canadian Forces School of Communications and Electronics (CFSCE) and, in this role, became

the custodian of personnel records for the staff and students of the school, including his own personnel record;

- (b) His own records included a form CF 459 Conduct Sheet which, at the time, recorded his guilty pleas in January of 2000 to two charges of fraud, contrary to section 380 of the *Criminal Code*, for which he was sentenced to detention for a period of 90 days, and a guilty plea in November 2001 to one charge of unauthorized discharge of a pistol;
- (c) Around February of 2010, Warrant Officer Scott, without authority, removed his conduct sheet from the personnel records envelope in which it was usually held and kept it in his office in a locked filing cabinet. A conduct sheet is the only record of a member's previous convictions;
- (d) Near the end of June 2011, Warrant Officer Scott's new supervisor, Captain Byrne, asked Warrant Officer Scott about the location of his personnel file and told him that he, Captain Byrne, would be completing a review;
- (e) A couple of days later, Warrant Officer Scott came to Captain Byrne's office and provided him with his conduct sheet. Captain Byrne was shocked that the member had held on to his own conduct sheet and told Warrant Officer Scott that he should know that he was not to be holding on to it. Warrant Officer Scott replied that Captain Ronholm, his previous supervisor, had told him to hold onto his own conduct sheet. This was a lie. Captain Ronholm never told Warrant Officer Scott to hold his own conduct sheet in his office;
- (f) A couple of days later, Warrant Officer Scott repeated this lie to Major Ferriss and, in the same conversation, admitted to Major Ferriss that he held on to the conduct sheet in order to prevent the information it recorded coming to the attention of persons in his chain of command;
- (g) I note that during a cautioned interview conducted as part of the investigation, the offender denied having told Captain Byrne and Major Ferris that he had been instructed to hold his conduct sheet, a fact he now admits;
- (h) There is no dispute that the removal of the conduct sheet from the personnel file, the withholding of information from the chain of command as a result, and the misrepresentation to Captain Byrne adversely affected cohesion within the CFSCCE command team that manifested in a loss of trust in Warrant Officer Scott; and I have no hesitation concluding that, as a result, there was prejudice to both good order and to discipline.

[9] On these facts, counsel before me jointly recommend a sentence of forfeiture of seniority for a period of five years and a fine in the amount of \$1275. The sentence to be pronounced is, of course, a matter for the court, but where, as in this case, both parties agree upon a recommended disposition, that recommendation carries considerable weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court, have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[10] As both counsel have noted, there are aggravating factors in this case. The offender was, at the time of the offences, a senior non-commissioned member with senior responsibilities to his chain of command and with a corresponding high level of trust placed in him. His current conduct sheet, Exhibit 3, shows the previous offences involving deceitfulness, to which I have already referred. I note that those offences are somewhat dated.

[11] There are, as well, some mitigating circumstances. His pleas of guilty, solemnly admitting publicly his responsibility for these offences, mitigate the sentence that would otherwise be fit. As his performance appraisal reports show, apart from the matters recorded in the conduct sheet, the offender has a fine record of service in the Canadian Forces over many years; and he has successfully completed a period of remedial measures imposed by way of recorded warning on 22 August 2011, for three different areas of shortcomings, one of which related to the improper possession of his conduct sheet.

[12] It is not a mitigating circumstance that the member was motivated to take these actions because he believed he was being, or would be, treated unfairly by his chain of command, as he testified. Whether the offender's grievances with members of the Canadian Forces were well-founded or not I do not consider relevant to the question of a fit sentence.

[13] Prosecution counsel submits that the sentencing principles of cardinal importance in the present case are denunciation and both general and specific deterrence, and counsel on behalf of the offender agrees. I would add that the court is also very much concerned here with the promotion of a sense of responsibility in this offender. For a senior non-commissioned member of the Canadian Forces to display a pattern of deceitful conduct directly relating to his or her duty, a fit punishment at court martial might well include loss of rank; but considering all the circumstances of this case, relating both to the offences and to the offender, I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest and I therefore accept the joint submission.

FOR THESE REASONS, THE COURT:

[14] **FINDS** you guilty of the first and third charge, for offences under section 129 of the *National Defence Act*.

[15] **SENTENCES** you to forfeiture of seniority for a period of five years and to a fine in the amount of \$1275 to be paid in monthly instalments of \$75 each, commencing 15 November 2012 and continuing for the following sixteen months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid balance is due and payable the day prior to your release.

Counsel:

Major A.C. Samson, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Commander B.G. Walden, Directorate of Defence Counsel Services
Counsel for Warrant Officer D.J. Scott