COURT MARTIAL

Citation: *R v Estridge,* 2013 CM 3003

Date: 20130131
Docket: 201308

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Corporal R.O. Estridge, Offender

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

REASONS FOR SENTENCE

Orally

[1] Corporal Estridge, having accepted and recorded a plea of guilty in respect of the first charge, not to the offence as charged but to a less serious offence prescribed at section 133 of the *National Defence Act*, which is absence without leave; and having accepted the same thing for the fourth charge, which is a less serious offence prescribed in section 133 of the *National Defence Act*, which is absence without leave; and also to the sixth charge on the charge sheet, the court now finds you guilty of these charges. The prosecutor, having withdrawn the second, third and fifth charge, then the court is then left with nothing else to deal with. It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the sentence.

[2] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct or, in a more positive way, to see the promotion of good conduct. It is through discipline than an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. It also

ensures that 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.

[3] It has been long 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 of the morale among the Canadian Forces, as stated in *R v Généreux* [1992] 1 SCR 259. 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.

[4] Here in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence to be imposed by the court. They recommended that this court sentence you to dismissal from Her Majesty's service in order to meet justice requirements. Although this court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. "Cogent reasons" mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute, or be contrary to the public interest as stated in the Court Martial Appeal Court decision of *R v Taylor* [2008] CMAC 1, at paragraph 21.

[5] Imposing a sentence is one of the most difficult tasks for a judge. As the Supreme Court of Canada recognized in *Généreux*, at page 293, 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.

[6] 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.

[7] 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 was 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.

[8] I came to the conclusion that in the circumstances of this case, sentencing should focus on the objectives of denunciation and general deterrence.

[9] Here, the court is dealing with offences for being absent without leave, contrary to section 90 of the *National Defence Act* and with an offence for failing to comply with a condition of an undertaking given under Division 3, contrary to section 101.1 of the *National Defence Act*. They are serious specific military offences, per se, as defined in the *National Defence Act* and they involve Canadian Forces principles such as obey and support lawful authority, and rely on Canadian Forces ethical obligations such as integrity, loyalty and responsibility.

[10] 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 offences. The offences you were charged with were laid in accordance with sections 90 and 101.1 of the *National Defence Act*. These offences are punishable by imprisonment for less than two years or to less punishment;

b. Secondly, the subjective seriousness of the offences and that, for the court, covers three aspects.

(i) First, as a corporal, as a soldier in the Canadian Forces, you gave up your responsibilities. If I understand correctly the evidence, your enrolment date is 15 January 2007, so you have six years in the Canadian Forces. You had a lot of experience, or enough experience to understand how it works in the Canadian Forces, but you decided that you will pass yourself before anything else without paying attention to the consequences of your decision. Clearly, it appears from the evidence that something triggered. I cannot infer anything, but something triggered your attitude during the year 2012 to the point that you thought about yourself, but you left your unit dealing with the impact of your absence and you clearly decided not to come back. Being arrested in a plane is a clear demonstration of an attitude of somebody who doesn't want to perform any more any duty in the Canadian Forces.

(ii) There is also the length of your absence. You didn't care any more about people, about your organization, you left behind. You may have had good reasons for doing so, and I totally ignore those reasons, but not coming back to your place of duty without warning anybody, or in this case, warning somebody but leaving the place without further notice, it's not an appropriate way to do things within the Canadian Forces, as with any employer or any other organization.

(iii) Also, despite that you were convicted for AWOL previously, you decided to commit the exact same offence. Everything started in the spring of 2012 and you carried on during the summer and fall of 2012, and probably those offences I am dealing with are the last chapter. You knew by committing these offences that you didn't have the expected and appropriate attitude and behaviour, and despite that, and despite that you were found guilty for that, you did it again. It is an aggravating factor that I have to consider.

[11] There are also mitigating circumstances:

a. First, 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 in the Canadian society. It disclosed the fact that, today, you are taking full responsibility for what you did;

b. There is the fact that you are still young: 26 years old, and you have potential as a member of the Canadian society. You have many years ahead to contribute positively to this society, even though you are not part of the Canadian Forces anymore;

c. There is 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 peers and your colleagues and your superiors, so it 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;

e. I have also considered the time you spent in detention. According to the evidence put before me, you spent seventeen days in military custody and one in civil custody for a total of eighteen days so I have to consider this also as a mitigating factor in the circumstances of this case;

f. Also, if the court accepts the suggestion made by counsel, this punishment, for sure, will remain on your conduct sheet unless you get a pardon for the criminal record you are getting today. The reality is that your conviction will carry out a consequence that is often overlooked, which is that you will now have a criminal record and it is not insignificant. You had one with the conduct sheet, but you are adding to that criminal record today.

[12] In consequence, the court will accept the joint submission made by counsel to sentence you to dismissal from Her Majesty's service, considering that is it not contrary to the public interest and will not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[13] **FINDS y**ou guilty of the first, fourth and sixth charge. In respect to the first and fourth charge, the court finds you guilty of the less serious offence prescribed at section 133 of the *National Defence Act*, of absented himself without leave.

[14] **SENTENCES** you to dismissal from Her Majesty's service.

Counsel:

Major J.E. Carrier, Canadian Forces Prosecution Services
Counsel for Her Majesty the Queen

Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Corporal R.O. Estridge