



COURT MARTIAL

Citation: *R v Coulombe*, 2013 CM 3001

Date: 20130115

Docket: 201218

Standing Court Martial

Denison Armoury
Toronto, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Ex-Corporal D.A. Coulombe, Offender

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

REASONS FOR SENTENCE

Orally

[1] Corporal Coulombe, having accepted and recorded a plea of guilty in respect of the second charge on the charge sheet, as amended, the court now finds you guilty of this charge. Considering that the first, third and fourth charges were withdrawn by prosecution, the court is then left with no other charges to deal with.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 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 of 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.

[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 imprisonment for a period of 30 days and to a severe reprimand 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 (see *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*, 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 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 it 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 particular circumstances of this case, sentencing should place the focus on the objectives of denunciation, general and specific deterrence.

[9] Here, the court is dealing with the military offence of stealing goods belonging to the Canadian Forces. Between the dates of 1 May 2010 and 1 September 2010, Corporal Coulombe took, without lawful authority, eight bridge boat erection (BBE) stators from a storage shed at the Swan Lake Engineer Training Area, CFB Gagetown. The BBE is a jet boat and a BBE stator is an impellor used to propel the BBE. The storage shed was used to store, amongst other things, BBE stators that were to be sent for refurbishment and that had been refurbished. BBE stators weigh around 45 pounds.

[10] At different times, usually during lunch break, Corporal Coulombe took different numbers of BBE stators from the storage shed and placed them in the back of the panel van that was used to transport the boat operators to and from the Swan Lake Engineer Training Area. At the main CFSME parking lot, after his colleagues had departed, he would transfer the BBE stators from the panel van to his own car. Corporal Coulombe sold the BBE stators for their metal value of \$1256.50 to a civilian scrap metal dealer located in Fredericton, New Brunswick. The BBE stators were the property of the Department of National Defence and were never recovered.

[11] 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 you have to perform.

[12] 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 114 of the *National Defence Act*, which is punishable by imprisonment for a term not exceeding seven years or to less punishment;
- b. Secondly, the subjective seriousness of the offence which consists of three aspects.
 - (i) With the rank and experience you had at the time in the Canadian Forces, you knew that by your actions, you were abusing the trust of your peers and your supervisors in the chain of command. You would not be surprised that they felt betrayed by your actions. The way you acted was disappointing for those who were part of your work environment and they had greater expectations from somebody like you, as it is from the public in general from their soldiers;
 - (ii) It is clear from the circumstances that you deliberately planned what you did and that you did not care about doing it again and again for some period of time. Such premeditated, repetitive and long action must be considered as a serious aggravating factor in the circumstances of this case;
 - (iii) Finally, the disposition of the goods stolen represents a serious loss to the Canadian Forces for which they have to pay if they want to use the engines again. In addition, you got some benefit by disposing of those goods for your own profit without reimbursing anybody.

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

- a. There is your guilty plea. Through the facts presented to this court, it 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 society. It also disclosed the fact that you are taking full responsibility for what you did as it appears by the fact that you confessed your crime and also because you expressed it in your apology letter;
- 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 in your military service. You were an average soldier that was progressing well in your trade, up to the time that you confessed what you did;
- d. 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, 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. It seems that you relate what is happening to you today to some kind of gambling addiction you have. I want to be very clear: there is no evidence other than the fact that you are personally relying on this situation to explain what happened; however, I do not have any evidence that first, explains if there is any relationship between the crime and this addiction; second, that indicates to me that you are doing something to control it. As a matter of fact, I am considering the existence of such addiction to explain the fact that it made it easier on you to commit the offence, but without more specific information, I cannot give much consideration to this factor;
- f. The fact that this same situation was dealt with administratively and resulted in your release from the Canadian Forces. It is not a sentence by itself, however, the loss of your job because of those actions for which you are before this court today must be considered as a mitigating factor in the circumstances. Your exclusion from the Canadian Forces sends a clear deterrent message to all members that such conduct can lead to this kind of consequence.

[14] Concerning the fact for this court to impose a sentence of incarceration to Corporal Coulombe, as suggested by counsel, it should be imposed only as a last resort. Stealing is a serious offence and becomes more serious in a military context where everyone must be in a position to trust each other. The commission of such an offence has a great potential to affect directly the morale and cohesion of a group of people working together and may result in failing to accomplish any mission. As mentioned in his own personnel evaluation report by his supervisor signing the performance part, which was introduced as evidence before this court: “however, his personal inability to adhere to CF regulations by stealing and reselling high value CF property created a negative work environment, destroying the essential trust relationship between the CF and the member”.

[15] Considering the nature of the offence, the applicable sentencing objectives and 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 conclude that imprisonment would appear as the appropriate and the necessary minimum punishment in this case.

[16] Now, what would be the appropriate type of incarceration in the circumstances of this case? The military justice system has disciplinary tools such as detention which seeks to rehabilitate service detainees and re-instil in them the habit of obedience in a military framework, organized around the values and skills unique to members of the Canadian Forces. However, in the case of a member of the Canadian Forces who has already been released, the objectives of a sentence of detention are no longer relevant and the remaining form of incarceration specified in the scale of punishments, which is imprisonment, must be considered. It seems clear to this court that incarceration in the form of imprisonment is the only appropriate sanction and that there is no other sanction or combination of sanctions that is appropriate for the offence and the offender.

[17] Concerning the length, the court considers that this situation would warrant imprisonment for a period of 30 days. Therefore, counsel's joint submission that the court imposes a sentence of imprisonment for a term of 30 days is reasonable in my view, given the context of this case.

[18] It is also suggested by counsel to combine with this sentence a severe reprimand. As often mentioned by military tribunals, a reprimand must be seen as a serious punishment in the military context. It expresses disapproval towards the actions or conduct of a person. Property offences, such as stealing, often attract such kind of punishment. I understand from counsel that in order to reflect the lack of integrity and honesty disclosed by the offender, such punishment should be combined with imprisonment imposed by this court. Taken from that perspective, I am ready to agree with their suggestion.

[19] In consequence, the court will accept the joint submission made by counsel to sentence you to imprisonment for a period of 30 days and to a severe reprimand, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute. Corporal Coulombe, please stand up.

FOR THESE REASONS, THE COURT:

[20] **FINDS** you guilty of the second charge for an offence under section 114 of the *National Defence Act*.

[21] **SENTENCES** you to imprisonment for a period of 30 days and to a severe reprimand.

Counsel:

Lieutenant-Commander D.T. Reeves, Canadian Forces Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Commander B.G Walden, Directorate of Defence Counsel Services
Counsel for Corporal D.A. Coulombe