



COURT MARTIAL

Citation: *R v Grondines*, 2013 CM 3016

Date: 20130617

Docket: 201315

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Ex-Ordinary Seaman M.R.J. Grondines, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Ordinary Seaman Grondines, having accepted and recorded a plea of guilty in respect of the second and third charge on the charge sheet, the court now finds you guilty of these charges. Considering that the court found you not guilty of the first charge, further to the decision of the prosecution to call no evidence on this charge, then the court is left with no other charges 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] 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, 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 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 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 a reprimand and a fine in the amount of \$500 in order to meet the justice requirements. Although this court is not bound by this joint recommendation, it is generally accepted, as mentioned by the prosecutor, that the sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons means where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or would be contrary to the public interest, (see *R v Taylor*, 2008 CMAC, at paragraph 21).

[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 offence or 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 established by the Court Martial Appeal Court and in 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 and general deterrence.

[9] Here the court is dealing with what is called a pure military offence, meaning by this that it characterized the Code of Service Discipline and is an offence that you don't find usually in the civilian world.

[10] In June of 2011, Ordinary Seaman Grondines was a course candidate at the Canadian Forces Naval Engineering School. He resided in "A" Block, Canadian Forces Base Halifax, on a floor restricted to male residents. Ordinary Seaman Grondines' room-mate was Ordinary Seaman K.R. McConnell. Ordinary Seaman Grondines was aware that current DND Quarters Regulations applied to him.

[11] On the evening of 11 June 2011, Ordinary Seaman Grondines consumed alcoholic beverages while visiting a number of bars in Halifax. In the course of the evening, he met a woman, K.V.P. Both became very intoxicated due to the voluntary consumption of alcohol.

[12] At approximately 0300 hours in the morning of 12 June 2011, both travelled together to Ordinary Seaman Grondines' room. Over the next hour, Ordinary Seaman Grondines and Ordinary Seaman McConnell engaged in consensual sexual activity with K.V.P.

[13] Later in the morning or early forenoon hours of 12 June 2012 and following their sexual activity, K.V.P. became unconscious and could not be awoken. Ordinary Seaman Grondines and Ordinary Seaman McConnell secretly moved K.V.P., while still unconscious, to the room of Ordinary Seaman Podesta, another sailor residing in an adjacent room. Upon returning to his room, Ordinary Seaman Podesta discovered K.V.P. partially clothed and unconscious in his bed. The personnel present were unable to revive K.V.P. and informed military authorities. K.V.P. was taken by ambulance to the hospital where she regained consciousness.

[14] The Canadian Forces National Investigation Service immediately started investigating the matter, but had little success in determining the circumstances around the discovery of K.V.P. in Ordinary Seaman Podesta's room. Over two weeks later, Ordinary Seaman Podesta approached CFNIS investigators and he told them that both Ord-

nary Seaman Grondines and Ordinary Seaman McConnell told him, "We are hearing that you are saying stuff about the sexual assault because people are saying stuff. Do not say anything about us and do not involve us," or words to that effect. Ordinary Seaman Podesta felt threatened as a result of this discussion.

[15] On 6 February 2012, CFNIS investigators interviewed Ordinary Seaman Grondines, who eventually admitted all the facts. He was arrested following his interview and released from custody under conditions.

[16] On 20 February 2012, Ordinary Seaman Grondines provided to CFNIS investigators letters of apology addressed to K.V.P. and Ordinary Seaman Podesta.

[17] Ordinary Seaman Grondines was charged by a CFNIS investigator on 19 June 2012. The matter was referred by the unit in December 2012 to the referral authority, who then referred the matter almost immediately to the Director of Military Prosecutions. Then a resolution proposal was made to the defence counsel and it is only in May 2013, further to a notice of application seeking a trial date, that the matter found its way. Essentially, a judge determined and set a hearing date for this matter on 17 June 2013.

[18] As mentioned by the prosecutor, these two offences are directly related to some Canadian Forces members' ethical obligations, such as responsibility and integrity for a non-commissioned member as for an officer being reliable 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 to perform, especially in such situations, which is respecting regulations for quarters.

[19] 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 offences you were charged with were laid in accordance with section 129 of the *National Defence Act*, which are punishable by dismissal with disgrace from Her Majesty's service or to less punishment; and
- b. the court considers the subjective seriousness of the offences, and it goes to two things:
 - i. First, the offences occurred on a DND establishment where the regulation was loud and clear about the fact that no female would be admitted in your quarters during specific hours. You did not pay any attention to the regulation in force at that time. In fact, you were selfish, you thought just about yourself and you didn't pay attention at all to the rules in force at that time.

- ii. Secondly, your conduct sheet. For sure, it refers to some matters that occurred after those incidents occurred, but it reveals a lot about your attitude toward discipline. I think you, further to those incidents for which you are before this court today, you had a lot of difficulty to understand what is discipline. They are spread out all along the way, up to the time you were released from the Canadian Forces, so for the court it's still an aggravating factor.

[20] On the other hand, I have also considered mitigating factors:

- a. first, your guilty plea. Through the facts presented to this court, the court must consider your guilty plea as a genuine sign of remorse and that you are very sincere in your pursuit of staying a valued asset in the Canadian society. It also disclosed that you are taking full responsibility for what you did;
- b. also I have to consider your cooperative attitude. Once put before the facts, you fully admitted what you did to the police investigator and also you provided letters of apology, which reflects the fact that you clearly regretted what you did;
- c. the fact that you had to face this court martial. Despite what was said by the prosecutor, being before a court martial very often has a deterrent effect on people being forced; you have not chosen to come here today. It's the prosecution who made that decision to charge and to pursue this matter before this court, and so as a matter of fact for a unit, it's an unusual event to have a court martial. You heard me about the fact that I am considering general deterrence as an objective for determining the appropriate sentence and I'm of the opinion being before this court it's a fact that could be deterrent, just not on you, but on others in this courtroom and others that will hear about this court martial;
- d. you have to remember also that the punishment that will be passed today will remain on your conduct sheet, and despite the fact that you're released from the Canadian Forces, you will need a pardon because you got a criminal record and these offences will add to the time you will be allowed to request a pardon in order to get rid of this criminal record. So it has an impact on you and sometimes those consequences are often overlooked, but it is still important;
- e. also there is the delay in handling this matter. The court does not want to blame anybody in this case because the court has not enough information to do so, but people must keep on their minds that the quicker a serious disciplinary matter is dealt with, the more relevant and effective the punishment is with respect to objectives considered by the court and the effect on the morale and cohesion of the unit members. The time elapsed since the inci-

dents occurred is one of the factors making it less relevant to give consideration to a more severe punishment with some deterrent effect; and

- f. there is also your age. Being 21, you still have a lot to provide to this society. I hope this event in your life may act as a wake-up call in order for you to help you find your way. You just found out about a place to reside, you're looking for a job, and if you want to contribute and be a positive asset in this society I suggest to you that you continue to do this because your experience so far in the military has not been great, but it doesn't mean that you cannot do anything good. So take this as a lesson learned and I hope it will help you to do better things in our society.

[21] So in consequence, the court will accept the joint submission made by counsel to sentence you to a reprimand and a fine in the amount of \$500 considering that it is not contrary to the public interest and it will not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[22] **FINDS** you guilty of the second and third charge on the charge sheet.

[23] **SENTENCES** you to a reprimand and a fine in the amount of \$500, payable in monthly instalments of \$50 each, starting on 1 July 2013 and going on for the next nine months after that.

Counsel:

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

Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for ex-Ordinary Seaman M.R.J. Grondines