Citation: *R.v. Corporal R.T. Crowe,*2005CM36

Docket: S200536

STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
CANADIAN FORCES BASE HALIFAX

Date: 17 April 2005

PRESIDING: COLONEL K.S. CARTER, M.J.

HER MAJESTY THE QUEEN
v.
CORPORAL R.T. CROWE
(Accused)

SENTENCE
(Rendered orally)

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[1] Corporal Crowe, the court, having accepted and recorded your plea of guilty to charge number 1, 2, and 3 on the charge sheet, the court finds you guilty of those charges. The court, having accepted and recorded your plea of guilty to charge number 4 on the charge sheet, but also having considered that the evidence demonstrates an inaccuracy in the particulars of that charge, the court, applying the provisions of section 138 of the *National Defence Act*, finds you guilty of charge number 4 with a special finding that the absence without leave ended on the 15th of December, 2004. The court, having accepted and recorded your plea of guilty to charges number 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 on the charge sheet, the court finds you guilty of those charges.

[2] The court, having accepted and recorded your plea of guilty to charges number 16, 17, 18, 19, 20, and 21 on the charge sheet, but also having considered that the evidence demonstrates that while the charge is properly laid under section 101.1 of the *National Defence Act*, the particulars of the charges inaccurately indicate a failure to comply with the condition imposed rather than a breach of an undertaking, given the court applying the provisions of section 138 of the *National Defence Act*, finds you guilty of charges 16, 17, 18, 19, 20, and 21 with a special finding that there was a breach of an undertaking under Division 3, not a failure to comply with a condition under Division 3.

[3] Let me begin by explaining why the court will not accept the joint submission that has been made by counsel. As the court explained earlier, the court takes very seriously a joint submission by counsel and the joint submission of counsel here was for a sentence of 17 days imprisonment and a severe reprimand. In essence, the submissions of counsel were that offences of this nature warranted imprisonment in the range of 45 days, but that due to the pretrial custody, this should be reduced to 17 days imprisonment and a severe reprimand, and the imprisonment should be suspended.

[4] The court outlined its concerns and asked for further submissions, and the concerns the court had were, first of all, that imprisonment did not serve the public interest, in this case, given the evidence of release and also the evidence of medical or rehabilitative treatment opportunities in the Halifax area; secondly, that the aspect of suspension had not been justified; thirdly, that the fact of suspension would not serve general deterrence; and finally, that the impact of the sentence that the court was considering was, from the court's perspective, one that addressed general deterrence more effectively. The court asked for submissions on all those issues.

[5] The prosecution's submission was somewhat divided inasmuch as the prosecution indicated that from the prosecution's perspective, in fact, rehabilitation and medical treatment could be done effectively in Edmonton, and there were no social or family reasons to keep you in the Halifax area. However, the prosecution reiterated that suspension was justified to facilitate treatment in Halifax which was in the public interest. The prosecution expressed the view that although the sentence being considered by the court was lower in scale, it would have a greater impact than suspended imprisonment, and the prosecution submitted that the general deterrence of reduction in rank would be minimized by the fact that you were not serving at your unit and would likely be soon released from the Canadian Forces.

[6] The defence indicated that he was in agreement with the prosecution, though the court takes that not to mean that he was in agreement that Edmonton could provide suitable medical and rehabilitative facilities. Your counsel stressed that the punishment should be the least required to restore discipline and indicated that as you were on the verge on release, in his view, the punishment being considered by the court was more than that required for general deterrence and higher than that imposed in other cases of absence without leave, such as that of Lieutenant-Colonel Popowych, though the court would indicate it understands, in that case, there was not a series of absences without leave but one long absence without leave just before a release date.

[7] Your counsel did not provide any civilian cases for breach of pretrial custody provisions from which the court could draw an analogy. Your counsel submitted again that the suspension would be appropriate because of the 54 days of compliance that showed you could and were willing to comply at least for a period of

time with conditions that were imposed upon you. Also because a suspension would leave you more money available to be garnisheed by a court order.

[8] Your counsel also argued that one of the reasons for a suspension was that you turned yourself in. The court has very carefully considered all the evidence before it, and, in fact, according to the Statement of Circumstances, you turned yourself in to the civilian police authorities for an outstanding civilian bench warrant that is set out in paragraph 15 of the Statement of Circumstances, and then the civilian police turned you over to military authorities.

[9] Your counsel also argued that, in essence, the two-for-one-approach-pretrial-custody should apply and indicated in the case of the facilities in Halifax, that you had been in for pretrial custody, that this was a small cell, that you had to be escorted to meals and to the washroom, and that your daily exercise period was in a limited outdoor space surrounded by high walls. In addition, he indicated that the state of pretrial custody was such that many people in your community knew about it; that is, in essence, the court would take it that it was analogous to a small town where a number of people know what is going on.

[10] Your counsel also indicated that the sentence, in his view, that the court was considering was really more one of specific rather than general deterrence, and cumulatively disproportionate. The court has considered these submissions and it would indicate it will accept the principle in this particular case that the two days of post-trial sentence should apply for every one day of pretrial custody, though the court will point out here that this was not a single period of pretrial custody, but, in fact, the result of five arrests, five periods of custody, and four periods of subsequent release.

[11] The court cannot accept that the suspension has been justified. In essence, it is clear that medical and rehabilitative services can be made available, both in Edmonton or in Halifax, while in detention. And the court has found nothing that indicates that the period of suspension is critical to any other obligations that you have.

[12] The court has considered very carefully the arguments of both the prosecution and the defence in relation to the cumulative nature of the punishments that are lower in the scale of punishments than imprisonment, and also lower in at least one case than the sentence of severe reprimand, and the court would indicate that this has influenced its thinking in regard to the cumulative nature of those punishments.

[13] It is perhaps somewhat difficult to understand occasionally, the less material that the court has, the more it must consider the circumstances. It is clear that in this particular case, the decision on sentence is important in terms of the liberty though perhaps not the career of yourself, Corporal Crowe. And the court has taken the

time to consider all the evidence before it and to draw conclusions only from those facts.

[14] The court, in determining the appropriate sentence in this case, has considered a number of things including the general principles of sentencing, which are found in cases, both civilian and military, which deal with offences and/or circumstances of a similar, or apparently similar nature. The nature of the offences to which you've pled guilty, your previous character, the mitigating and aggravating factors disclosed, and the statement of particulars, as well as all the documentary evidence introduced by counsel.

[15] The court has also considered very carefully the submissions of counsel, and the fact that the court has not accepted their joint submission does not mean that the court has not been influenced significantly by the matters that they have raised in their submissions. Given the nature of the charges and the stage that you are at in your service with the Canadian Forces, the court has taken time to go back and review the fundamental nature of the sentencing process.

[16] The fundamental purpose of sentencing is to enhance the protection of society, and the Supreme Court of Canada has stated that in the case of *R. v. Lyons* found at 2 S.C.R. 309, at page 329. The protection of society is achieved if both the imposition—is achieved if the imposition of legal sanctions serve to deter both convicted offenders from re-offending and those who have yet to offend from doing so at all. Just sentences promote respect for the law which enhances the protection of society.

[17] A sentence must be neither too harsh; that is, based on vengeance, nor too lenient; that is, based on misplaced sympathy. The general principles of sentencing applied by both courts martial and civilian criminal courts in Canada are founded on this fundamental purpose; that is, to protect the public, and that public includes, in the context of courts martial, the Canadian Forces and the individual members of the institution. The protection is from unlawful conduct and its consequences.

[18] The general principles that are used to achieve this include the principle of deterrence, specific deterrence, which is to deter the individual, and general deterrence, which is to deter others, in similar circumstances, who might be considering similar actions; the principle of denunciation, which is an expression of society's rejection of the conduct; and thirdly, the principle of reformation and rehabilitation of the offender, which may occur within military society or within Canadian society generally.

[19] In addition, another underlying principle is that of proportionality. A sentence must be proportionate to the offences and the degree of responsibility of the

offender. This requires that the sentence is appropriate not only to the nature of the offence but also to the moral blameworthiness, the character of the offender, the circumstances that it was committed in, and the consequences of its commission. A judge must also take into account the mitigating factors, which are things such as a guilty plea, and if an offence is a first offence; and aggravating factors, which include things such as premeditation and repetition of an offence.

[20] Finally a judge must not impose a sentence which is disproportionate given sentences imposed on similar offenders in similar circumstances. In saying that, the court would state it is sometimes difficult to determine what constitutes similar circumstances and it must almost always keep in mind this is an individualized process. The court must determine which principle or combination of principles, when applied, will reestablish respect for the law, and in the case of courts martial, as a consequence of this, achieve the ultimate aim, which is to reestablish discipline.

[21] The court is also required in imposing a sentence to follow directions as set out in QR&O 112.48, which obliges it in determining a sentence, to take into account any indirect consequences of the finding or of the sentence, and impose a sentence commiserate with the gravity of the offence and the previous character of the offender. Both civilian and military law require the offence be punished by the minimum punishment necessary to achieve those aims.

[22] The court would indicate it has also considered the guidance of the *Criminal Code of Canada* in section 718 as to the purpose of sentencing, particularly, as in this case, since some of the offences have analogous provisions in the *Criminal Code*. Those principles and purposes are to denounce unlawful conduct; to deter the offender and other persons from committing offences; to separate the offender from society when necessary; to assist in rehabilitating offenders; to provide reparation for harm done to victims or to the community; and to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims in the community.

[23] The court is also cognizant of the direction of the Supreme Court of Canada in the 1998 case of *R. v. Gladue* found at 133 C.C.C. (3d) 385, where at page 402, it states imprisonment should be used as a sanction of last resort. And this is also reflected in the Court Martial Appeal Court decision of *R. v. Lui*, 2005 CMAC 3 that was provided to the court by your counsel.

[24] The court takes into account that the ultimate aim of sentencing is a restoration of discipline in the offender and in the military society, and this is appropriate even if the offender is in the process of leaving the Canadian Forces. Discipline is that quality that every Canadian Forces member must have which allows him or her to put the interests of the Canadian Forces, the interests of Canada before their personal interests, and that really goes to the heart of the matter here.

[25] Members of the Canadian Forces must be prepared to do this because they must willingly and promptly obey lawful orders, which can have very adverse effects to their own personal interests. Discipline requires trust and reliability. I've described discipline as a quality because ultimately, although it's something which is developed and encouraged by the Canadian Forces through instruction, training, and practice, it is an internal quality. It is one of the fundamental prerequisites to operational efficiency in any military force. It is maintained by many different mechanisms, including personal example, counselling, education, rehabilitation, and training, and it is only when those mechanisms failed that disciplinary action, such as summary trials and courts martial must be resorted to.

[26] Those then are the general considerations that the court must take into account in determining what an appropriate sentence is in this case; that is, what would properly reflect the gravity of the offences, protect the public, reestablish respect for law and discipline, and take into account the circumstances of the commission of the offences, your previous character, your current situation, and what is the minimum necessary.

[27] So the court has spent some time going through all the material that has been provided to it to try and understand the progress of your career and to put the offences, to which you have pled guilty, in context, and the court is going to go through that factual basis before dealing with the submissions of counsel and its considerations of the legal provisions and principles of sentencing.

[28] You're currently 34 years old. You enrolled in the Canadian Forces in Hamilton, Ontario in February 1990, at the age of 19 and served as a member of Land Forces, primarily as a combat engineer, until your release in May 1993. During that service, you served overseas in Vukovar, Croatia as a peacekeeper for six months. That is the only overseas deployment that is indicated on your record.

[29] After your release, you completed high school while you were a civilian in 1994. You rejoined the Canadian Forces again in Hamilton, Ontario in July 1997 as a member of the air forces, and after redoing basic training, went to Borden to train as an Avionics Technician. You were qualified QL3 in May 1998, and posted to the Halifax area in June 1998, where you stayed in different postings until today. Your first year of service in the Halifax area with 12 Air Maintenance was in 1998/1999, and as summarized in your PER, which is Exhibit 12, shows you adapting well to service life.

[30] In the same time frame, there was indication that you provided some support, though no indication of exactly what your personal involvement was, that is, whether in servicing aircraft or some more active involvement, during the Swiss Air disaster, and the general letter, Exhibit 13, which was directed to all members of the unit, was on your file. In the same time frame, you also participated as a member of the

Ready Duty Work Force in the delivery of and setting up and tearing down of military structures at the 1999 Nova Scotia International Air Show.

[31] In June 2000, your daughter was born making her a little less than five years old today. In July 2001, you were promoted corporal, a rank that you still hold today. In February 2003, a little over two years ago, you apparently advised the military that you were separated from your spouse, resulting in a change of marital status entry on Exhibit 6. In November 2003, you were charged in civilian court in Halifax with driving with a blood alcohol level exceeding .08 milligrams of alcohol in 100 millilitres of blood, and you were convicted of that offence in December 2003. In addition to a $700 fine, you had your driver's licence suspended from December 2003 to December 2004.

[32] Your conduct sheet also establishes in April 2004, you were tried summarily for two incidents: one occurring in July 2003 of behaving with contempt to a superior officer, and one occurring in November 2003 of breaching a condition or release from custody imposed on a release from custody on 26 September 2003. The court has no information as to the reasons for your arrest in September 2003, but your conduct sheet indicates that the condition breach was "shall not become intoxicated" and the date of the breach indicates it was the same as the date of the charge for driving with an excessive blood alcohol level.

[33] In 2003 it appears that problems with alcohol consumption began to have an adverse impact on your life and work. From Exhibit 15, the evidence for the court is that in early 2004, you were diagnosed with an alcohol dependency problem and you went through a treatment programme at the rehabilitation clinic in Halifax in February 2004. However, you withdrew yourself from the treatment before finishing the programme.

[34] In June 2004, Dr Kenneth Cooper, the staff psychiatrist at the Occupational Trauma and Stress Support Centre Atlantic in Halifax, saw you and did an initial assessment for the diagnosis of alcohol dependence and post-traumatic stress disorder, though there is no indication before the court of the origins of the post-traumatic stress disorder. After consideration and by mutual agreement, you were sent to the Homewood Health Centre near Guelph, Ontario for treatment for these problems. That programme began on the 22nd of September, 2004.

[35] In summary then you spent three and a half years of service as a private from 1990 to 1993. You re-enrolled in 1997, and after training, began service in Halifax in the summer of 1998. Between 1998 and 2003, you provided five years of good service, you were promoted corporal in 2001, and although there are no outstanding indications, there are equally no indications of any problems. Subsequently,

however, you have your first arrest and a custody release, and it appears that alcohol becomes a problem. You made two attempts at alcohol—or alcohol and PTSD rehabilitation, and withdraw yourself from both of them.

[36] The last three months of 2004 and the first four months of 2005 are essentially covered by the contents of the charge sheet. The court would also note, because it has come up in some detail during submissions of your counsel, that Exhibit 9 indicates you have not been paying court-ordered child maintenance for your daughter to your spouse since February 2004. Before the 14th of December, 2004, you were in arrears $4,290 and by March 11, 2005, you were in arrears $6,006. A garnishment procedure for compulsory payment allotment is in the process of being actioned and the court will speak a little bit more about when it understands, from the additional information provided, that will come into play.

[37] The court has combined the information on the charge sheet and the Statement of Circumstances so it can better understand what has happened over the past seven or eight months. Between the 13th of October and the 18th of October, that is Wednesday, the 13th of October and Monday, the 18th of October, 2004, you were absent without leave from the Alcohol Rehabilitation Centre you were sent to by mutual agreement between yourself and Canadian Forces authorities, and I say Canadian Forces authorities because your medical care and rehabilitation is provided to you by the Canadian Forces. That makes that centre your place of duty. So you were absent without leave there for essentially four days and at least two minutes. The court has taken the approach that in any charge where it is not specified how much of a time period you were absent during a day, that you were absent one minute, because that is the minimum time frame that the court can apply and the court will always apply the minimum in favour of the offender.

[38] You weren't arrested but your unit arranged to have you flown back from Halifax on Monday, the 18th of October, for a medical appointment on the 19th of October. You did not attend that appointment on the 19th of October and you were arrested the following evening, Wednesday evening, at your residence in Halifax and released without conditions. In essence, you were then AWOL for a period of forty-one hours and seven minutes. The following day, you were put on sick leave from the 21st of October until the 9th of November. From the 9th of November, 2004, you did not return to work and you were again absent without leave from your unit for a period of seven days, twenty-one hours, and thirty-one minutes, until the 17th of November, 2004, a Wednesday, at 21:30, when you were arrested again at your residence.

[39] It is unclear to the court why it seemed to be difficult to find you since in each and every occasion, it appeared that when the military police turned up at your residence, they were able to arrest you, but quite simply, there were just no explanation before the court.

[40] This time, however, you were released on conditions, and these included amongst other things: attending all scheduled medical appointments and reporting in daily by phone to the administration officer. There is also an indication one of the conditions is that you should only consume alcohol as prescribed by a medical officer; the court is not quite aware of any such prescriptions, but it presumes that that was put there for a purpose, and in certain circumstances, perhaps medical officers do prescribe alcohol as a treatment.

[41] You began breaching the conditions within one or two days of your release on Friday, the 19th of November, 2004; and then the following Monday and Tuesday, when you had two breaches; Wednesday and Thursday, when you had two breaches; Friday; the Monday after that, the 29th of November; and then Tuesday, the 30th of November, 2004. Essentially, it appears that the obligation to report daily to the administration officer didn't apply on the weekends since you are not charged with that, or you complied with it during the weekends. But, in essence, over a period of 12 days, all these breaches occurred.

[42] You were then arrested again by the military police at your residence on Tuesday, the 13th—the 30th of November, and again, released on conditions on Wednesday, the 1st of December. That same day, you were placed on recorded warning for your failure to report. You were directed to attend the Base Chief Petty Officer's office at Stadacona, in Halifax by the latest 0730 hours on the 2nd of December, 2004, but you never showed up. In essence, you ceased to be breaching the conditions that had applied to you, it appears, by the fact of going AWOL completely.

[43] On Wednesday, the 8th of December, 2004, three charges of AWOL were laid against you. On 15th of December, 2004, you called your unit and you were given approximately three weeks leave and advised of an attached posting. Your leave pass and notice of posting was sent to you by registered mail, clearly indicating the Canadian Forces knew where they could find you. There is, however, no indication that they sent or gave you any notice, at that time, of the charges that had been laid against you on December 8, 2004. Perhaps it was to the surprise of some, but you did not show up at the end of your approximately three weeks of leave, on Wednesday, the 5th of January, 2005, but rather, you were turned over to the military police on Tuesday, the 8th of February, 2005, approximately 32 days, 20 hours, and 15 minutes later.

[44] During your absence on Friday, the 28th of January, you were charged with another absence without leave and 10 charges of failure to comply with conditions imposed under Division B [3], contrary to section 101.1 of the *National Defence Act*, and on Monday, the 14th of February, you were released on an undertaking by a military judge. So as of the 14th of February, 2005, the situation existed that there were three charges of absence without leave, which had been laid against you on the 8th of

December, 2004; one charge of absence without leave, which had been laid against you on the 28th of January, 2004 [2005]; and 10 charges of failure to comply laid against you on the 28th of January, 2004 [2005]. In essence, the bulk of the charges on the charge sheet had already been laid and presumably were in the process of being referred before your release on conditions on the 14th of February, 2005.

[45] There was no breach of any undertakings from the 14th of February, 2005 until Sunday, the 10th of April, 2005. As your defence counsel quite rightly stated, for 54 days, the indications are that you complied with all the conditions, and I would indicate that with the military police, their approach seems to require attendance on weekends as well as week days. In other words, there were 54 days when charges had been laid, but the referral process had not resulted in any charge sheet being produced.

[46] The court does not know if it is unit authorities, referral authorities, or the preferral process which caused this delay, but the court accepts the prosecution's description of this as a delayed process, and the court is surprised about this because it would expect that for all discipline matters, that expeditious action is a priority, but particularly, that it would be a priority when the person has been arrested and released from custody on conditions. Not only the *National Defence Act,* section 162 demands expeditious action, but also the Court Martial Appeal Court in a number of its decisions, as well as military traditions. And indeed, it raises concerns about the comments that are made about how long a court martial process takes.

[47] The evidence is that all the charges had been laid by 14 February 2005 except those that occurred between the 10th of April and the 14th of April. What the court would say is it is not an excuse because you are still responsible for your actions, but the court does accept that it is a mitigating factor that it took so long to put the process for a court martial in place.

[48] The court would also say, in regard to your current situation, the evidence is that you are making something in excess of $50,000 a year; that you have, as indicated, approximately $6,000 in debt that is owed pursuant to a family support order. The evidence before the court is also that if you are released in the next little while, you will receive a return of contributions in a lump sum. And the court accepts that the evidence before it shows you are likely to be released in the near future.

[49] The submission of the prosecution was that the series of offences should be treated seriously, and that the applicable principles of sentencing are the protection of the Canadian Forces, the requirement to punish the offender, and deterrence; and the primary goal here is general deterrence. The prosecution stressed that absence without leave imposes hardships on other Canadian Forces members and on units and unit

efficiency. And the prosecution submitted that your breach of conditions showed a flagrant disregard for military and judicial authority.

[50] The overriding concern, according to the prosecution, was to protect discipline. In mitigation, however, the prosecution indicated the court should consider your guilty plea, the fact that you have been subject to stringent conditions and the lengthy referral process that the court has referred to earlier. On the other hand, in terms of aggravation, the prosecution stressed that there were numerous offences and that you had a conduct sheet with a prior conviction for a breach of conditions. As I've indicated, the prosecution joined with the defence in a submission for a sentence which the court has rejected for the reasons it has given before.

[51] Your defence counsel argued and the court has accepted that it's a logical inference that you will be released for some reason in the near future. In terms of mitigating factors, the defence stressed your alcohol dependency and your post-traumatic stress disorder diagnosis and indicated that even if you were not cooperating with treatment for these factors, they should be considered mitigating factors. Your defence counsel also argued that the number of years of service you had, particularly those where you caused no difficulties and apparently had good service, should serve as equity.

[52] He also submitted that although there are many offences, that the court properly should look at them as really a series of clusters; that is, rather than looking at them as individual offences, the court should look at them in context and join them together. He argued that your guilty plea was not only an acknowledgement of responsibility but, to some degree, perhaps, an acknowledgement that you understood you needed to accept assistance for your problems.

[53] Your counsel argued that, in fact, your personal challenges and medical conditions might well be the root cause of a number of your offences, and that in a number of cases, the breaches of conditions, such as missing medical appointments, probably caused as much harm to yourself as it did to the system. Your counsel argued that the court should not see your breaches as simply challenges to the system or signs of disrespect but, rather as further evidence of the difficulties that you're experiencing, and that really, there were a series of attempts and relapses, particularly in regard to the last five charges where you had been in compliance for 54 days straight.

[54] Your counsel stressed incarceration should be a last resort and put before the court, as indicated earlier, the *Lui* decision of the Court Martial Appeal Court. He joined in the joint submission, but he also indicated that one of the considerations for the court should be clemency.

[55] The court has considered the situation and the first thing that it would say is it accepts that these are offences that are not threats to individuals. In essence, here, it is really the question of respect for the law and respect for obligations. The court agrees with counsel that general deterrence is the principal concern here. Specific deterrence would be a much greater concern if the court was not convinced that you are leaving the Canadian Forces shortly.

[56] So the court has considered what is a minimum sentence, and in doing so, it has considered direct and indirect consequences of findings of guilt and most applicable here, sentences. What I would say, there is before the court, the evidence is that your release is separate and apart from the court martial process; that is, it would be continuing regardless of whether or not there was a court martial, findings of guilt, or whatever the sentence is that the court would impose upon you.

[57] In terms of yourself, the court finds that you're a mature individual, that you're suffering from alcohol dependency very clearly, and you are suffering from post-traumatic stress disorder to some degree from an unknown origin. You have not been able, for whatever reason, and it's not clear to the court other than it is self-initiated, to complete the treatment that has been offered to you for these problems, and you have twice taken yourself off courses. The deterioration in your conduct began in 2003, and by 2004, serious difficulties were apparent at work.

[58] The court has accepted the submission of your counsel that the 21 charges should be considered as a pattern; that is, a cluster of offences, and that is one reason why the court went through and analysed the events in the context of what else was happening to you. So, in essence, the court is prepared to consider the first two AWOLs are essentially continuous offences. Then as soon as your sick leave is over, there is another absence without leave, then there are series of breaches of conditions, but they all occur within a 12-day period. So the court has considered that as a cluster. You then got another period of absence without leave, which, in essence, supercedes any conditions, and interestingly, that absence without leave is considered terminated when you contact your unit and you're given three weeks' leave. At the end of the three weeks' leave, you do not return and you are absent without leave again.

[59] The court has also taken into account that when Canadian Forces authorities, specifically, the military police, go to arrest you, they always seem to be able to find you very easily by going to your residence.

[60] So the court has accepted that you are responsible for your actions, but at the same time, it's taken into consideration that there are some unexplained delays in acting, which if they had not occurred, it appears would have reduced at least your ability to continue to repeat offences. For example, there is no explanation for the court why there are periods of several days that are left before any arrest warrants are issued.

[61] The prosecution argued that the adverse impact of absence without leave on your unit was an aggravating factor. The court has considered that and gives it very minimal weight in these circumstances, because, in essence, the evidence before it is that when you called in from absence without leave, at one point in time, the reaction was to give you leave. So the court would indicate that that, to some degree, indicates that your unit did not find your absence had a significant adverse impact on their operations. There may well be an explanation as to why this occurred, but it is not before the court.

[62] The court has considered as mitigating factors, first of all, your guilty pleas; secondly, the potential connection between some of these offences and certainly your alcohol dependency; thirdly, the length of pretrial custody, though as the court has indicated, it has not considered that as a one-time-custody, it's very clear it's multiple custodies from multiple arrests, and the length of time taken to prefer these charges. The court has also considered your equity in the Forces, but it must say when it looks at aggravating factors, that equity is, to a large degree, balanced off by your maturity and experience.

[63] The court has also considered that there is a previous conviction for a breach of conditions, and most seriously, there are the repetition of offences. The context in which the court sees these offences occurring are that there is, at least with the absence without leave, no impact—no evidence of significant impact on unit operations. As indicated, you're in the process of being released, not as a consequence of the finding or sentence of this court martial, but nevertheless, the court takes that into account, because it makes specific deterrence a much lesser the consideration and rehabilitation a much greater concern.

[64] The court would specifically mention that the offences that are set out, that occurred between the 10th of April and the 13th of April resulting in charges being preferred on the 15th, a court martial convened that day and commencing the following day, indicates that when the system wishes to, it can work with alacrity. So taking the cluster approach, the court has considered, in essence, there are four clusters here. Really, the first three charges are a series of absences without leave that are more or less continuous; that is, they're intervened only by giving you sick leave; that charges number 6 to 15 are a series of breaches that occurred over a 12-day period; that charges number 4 and 5 are essentially another cluster of absence without leave; and charges 16 to 21 are a series of breaches which occurred, again, over a short period of time.

[65] With regard to the last breaches, the court would indicate that it accepts that these were contributed to by the delay in proceedings. For the reasons that the court has set out here and for its explanations in regard to not accepting the joint submission, the court does not consider that imprisonment is required. The court believes that the

circumstances of general deterrence, and rehabilitation and reintegration can be facilitated by your detention here in Halifax.

[66] In doing so, the court has considered carefully the additional submissions provided by your counsel and the evidence of the contents of QR&O 207 and Exhibit 16 in particular, and from the court's analysis, even while in detention, there should be sufficient pay to meet your obligations of support, and the court would indicate that its calculations, based on those documents, is that the first payment would come out of your end of April pay. The court would indicate that it is not saying, by imposing detention, that it is its view that you are suitable for further service. It is simply saying that in these circumstances, that sentence is one which best facilitates the goal of general deterrence and also rehabilitation.

[67] There is nothing in the material before the court which indicates that in these circumstances, you could provide further useful service to the Canadian Forces. The court, however, considers that even when clustering these offences, there is a repetitive aspect to them which requires, in addition to detention, a reduction in rank, and so the court is also going to impose that. However, the court has considered the submissions of counsel as to the cumulative nature of sentence, and for that reason, the court will not impose a fine in addition. So, please stand, Corporal Crowe.

[68] Corporal Crowe, the court sentences you to detention for a period of 14 days and reduction in rank to the rank of private. This sentence is imposed at 1820 hours on Sunday, the 17th of April.

COLONEL K.S. CARTER, M.J

Counsel:

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