



COURT MARTIAL

Citation: *R. v. Sloan*, 2014 CM 4004

Date: 20140609

Docket: 201399

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Sergeant D.M. Sloan, Offender

Before: Commander J.B.M. Pelletier, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Sergeant Sloan, having accepted and recorded a plea of guilty in respect of the third and only remaining charge on the charge sheet, the Court now finds you guilty of that charge.

[2] It is now my duty as the military judge 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 Armed Forces, which is a fundamental element of military activity. The purpose of this system is the promotion of good conduct by allowing the proper sanction of misconduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. In doing so, it also ensures that the public interest in promoting respect for the laws of Canada is served by the punishment of persons subject to the Code of Service Discipline.

[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 morale among the Canadian Forces.

[5] As the Supreme Court of Canada recognized in *R. v. Généreux*, [1992] 3 SCC 259, at page 293:

...To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

At the same page, 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.

[6] That being said, punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the Court to "Impose a sentence commensurate with the gravity of the offence and the previous character of the offender," as stated in the *Queen's Regulations and Orders*. 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.

[7] 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.

[8] When imposing a sentence, a military court must also take into consideration the following principles:

- (a) the sentence must be proportionate to the gravity of the offence;
- (b) the sentence must be proportionate to the responsibility and previous character of the offender;

- (c) the 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, if less restrictive sanctions may be appropriate; 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.

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

[10] Before the Court is a 38 year old offender, who joined the Army on 4 November 1994. He is a member of the 1st Battalion Royal Canadian Regiment of Canada, located in Petawawa. He served on no less than six operational tours, including Bosnia, Kosovo, and four tours in Afghanistan. He was promoted to his current rank of sergeant on 15 October 2007. He has two dependant sons from a previous marriage and he is in a common law relationship since December 2013. He has pleaded guilty to one charge of drunkenness. Both counsel make representations to the effect that he's an admirable soldier whose behaviour at the time of offending is out of character for him.

[11] A Statement of Circumstances was read by the prosecutor and accepted as conclusive evidence by Sergeant Sloan. In the early hours of 3 February 2013, Sergeant Sloan was in attendance at the annual ball commemorating the Battle of Paardeberg, an all ranks event held at the 1 RCR Drill Hall at Canadian Forces Base Petawawa. He had consumed alcohol in a sufficient quantity to reach a level of intoxication that was a significant factor in him behaving in a disorderly fashion. Specific instances of this disorderly behaviour were specified in the Statement of Circumstances as follows:

- (a) Sergeant Sloan was at a table with other members of the 1 RCR and was engaged in heated discussion with Warrant Officer Morris. Corporal Fernandez, a member of the 1 RCR, but unknown to Sergeant Sloan, attended at the table to determine what was happening.
- (b) As Corporal Fernandez attempted to intervene and break up the fight between Sergeant Sloan and Warrant Officer Morris, Sergeant Sloan struck him once in the nose causing it to bleed.
- (c) Corporal Fernandez retreated to a spot on the drill hall floor; his injuries were attended to by Sergeant Young. Sergeant Sloan was pushed up against a nearby wall and restrained.
- (d) Master Warrant Officer Dalton approached Sergeant Sloan and enquired what the situation was. Sergeant Sloan then looked directly at Master

Warrant Officer Dalton and said, "Fuck you, sir." He then attempted to either push or punch the sergeant major, but missed. This action did, however, cause Master Warrant Officer Dalton to move backwards.

- (e) Sergeant Sloan then advanced on Corporal Fernandez, who was still being attended to by Sergeant Young. Sergeant Young's back was to Sergeant Sloan. Sergeant Sloan began to rain punches on both men with Sergeant Young covering up both himself and Corporal Fernandez.
- (f) Sergeant Sloan was eventually pulled away from the two men and pushed up against a nearby wall. He broke away, but was restrained again and pushed into a nearby cloakroom. A taxi was called for Sergeant Sloan and he was sent home.

[12] In arriving at evaluating what would be a fair and an appropriate sentence, the Court has considered the objective seriousness of the offence, which, as provided by section 97 of the *National Defence Act*, is punishable by imprisonment for less than two years given the status of the offender, who is on active service as a member of the Regular Force.

[13] The Court considers most aggravating in the circumstances of this case the subjective seriousness of the offence committed.

[14] The offence of drunkenness is not aimed at sanctioning the consumption of alcohol or a drug. It is meant to address fitness for duty or behaviour that is disorderly or discredits Her Majesty's service. It reflects the fact that no member of the military is exempted from the obligation to show respect to anyone, let alone refrain from violence despite any level of intoxication.

[15] The attendance at commemorative events or military celebrations which sometimes involve the availability of alcoholic beverages is part of military life. The persons attending are generally going to these events, such as military balls, to have a pleasant time. They should not be subjected to violence or disrespect.

[16] The facts in the Statement of Circumstances reveal that the disorderly conduct here involves striking a corporal, causing him to bleed from the nose, punching or attempting to punch a sergeant major after insulting him, and raining punches and escaping restraints by other members is of significant subjective severity, even if no one was hurt to the point of requiring medical treatment.

[17] Despite the subjective severity of the offence, there are substantial mitigating factors present in this case as mentioned by counsel and no doubt noticed by the chain of command. The Court has considered the following:

- (a) first and foremost, the offender's plea, which the Court considers as a genuine sign of remorse and an indication that the offender is taking full

responsibility for what he has done and wants to remain a valid asset to the Army and the Canadian Forces. His admission of responsibility occurred in a very public forum of this court martial, which is where I consider that the fact of facing a court martial plays out a mitigating circumstance, even if other military judges may have chosen to consider this factor as a stand alone one. Indeed, in this case the behaviour of the offender was of such a nature that laying a charge to be brought for trial before a military tribunal such as this Court is an entirely normal outcome. It is what the offender chose to do when facing those charges that is worthy of mitigating effect, and in this case, he pleaded guilty;

- (b) the second mitigating circumstance that I considered is the fact that the offender has an outstanding record of service in the Canadian Army, which includes six deployments; sometimes with little time between them. It shows a tremendous devotion to service and duty, especially with units engaged in active combat in Afghanistan;
- (c) I also considered the fact from the representations of counsel in the evidence produced before this Court that incidents which gave rise to the charge, which occurred in February 2013, were unusual and have not repeated themselves;
- (d) I also note that the incident gave rise to an administration period of initial counselling for conduct involving both alcohol and quarrelling, and that this counselling was concluded successfully;
- (e) I also accept to consider the representations that were made by defence counsel to the effect that Sergeant Sloan continues to receive assistance, which conforms with the statement by Major Norton in a letter admitted as Exhibit 6, to the effect that he is willing to accept help and take responsibility; and
- (f) finally, the offender remains a productive member of his regiment as evidenced by the recent contribution he has made as the unit gunnery training sergeant mentioned in the correspondence received at 1 RCR from superior officers. I take it as meaning that the offender's unit adopts the view that the poor choice Sergeant Sloan has made in offending is not something that should preclude his contribution and progression in the Army.

[18] The prosecutor and defence counsel made a joint submission on sentence to be imposed by the Court. They recommended that this Court impose a sentence of a reprimand in order to meet justice requirements. Although this Court is not bound by this joint recommendation, it is generally accepted that a 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 public interest.

[19] After hearing the initial submissions of counsel, the Court was not convinced that accepting the jointly proposed sentence would be appropriate. Consequently, the Court reopened the sentencing hearing as required by law to express specifically the concerns the Court had, and allowed counsel to make additional submissions justifying the proposed sentence.

[20] During that hearing a letter from Sergeant Sloan's acting commanding officer, dated today, was admitted as Exhibit 6, expressing the view held by the commanding officer of 1 RCR that the sentence of a reprimand would be sufficient to meet the objectives of discipline in his unit and providing additional information on the past performance of Sergeant Sloan. Also the Member's Personnel Record Résumé, initially offered by the prosecution as Exhibit 3 was dated 2 June 2013, over a year ago; an updated copy was submitted as Exhibit 7.

[21] After being offered more time to consider the Court's specific concerns, counsel did choose to submit additional representations. Unfortunately, these arguments did not address specifically the concerns that the Court had expressed regarding its view of the fitness of the joint submission.

[22] I have carefully considered the submissions presented to me by counsel. Unfortunately, these were insufficient to reassure the Court that the proposed sentence was not unfit. The prosecution has not provided the Court with any sentencing precedent relevant to the offence of drunkenness. The Court, therefore, must rely on its judicial instinct and experience to conclude that a sentence as low as a reprimand for a sergeant clearly does not match the circumstances of the offences as severe as those present here.

[23] Despite the fact that I am prepared to give full weight to the sentencing objective of rehabilitation of Sergeant Sloan in this case, it remains that the gravity of what occurred on 3 February 2013 must be sanctioned. I am of the view that the proposed sentence of a reprimand would be unfit and that it would be grossly insufficient to meet the other objectives of sentencing that are at play, namely general deterrence and denunciation. The Court is of the view that a sentence seen as clearly unfit is also likely to bring the administration of justice into disrepute.

[24] I did consider the precedence the prosecutor offered to me in referring to the case of *R. v. Stull*, 2013 CM 2014, decided by my colleague, Judge Gibson. As the prosecutor suggested, referring to paragraph 33 of that decision, the offence committed here is a clear demonstration of a failure by senior non-commissioned officers to live up to the standards expected of them, having regard to their seniority and level of experience.

[25] The punishment of a severe reprimand is meant to express this approbation for such a conduct. The gravity of the conduct here requires in my view an expression of

this approbation that exceeds the punishment of a reprimand proposed by counsel in order to avoid that the sentence be seen as clearly unfit and likely to bring the administration of justice into disrepute. Yet at the same time the imposition of a sentence of a severe reprimand will not have a detrimental additional effect on this offender, especially considering his rehabilitative efforts as discussed during submissions.

[26] It is the Court's view that a severe reprimand is the minimum necessary intervention to ensure the interest of justice here.

[27] Sergeant Sloan, the circumstances of the charge you pleaded guilty to reveal a behaviour that is highly unacceptable in the Canadian Army and the Canadian Armed Forces. My decision to impose a higher sentence than recommended by counsel is not a statement directed at you, your record or the efforts that you made and are still making to remain a productive member of the Canadian Armed Forces. It is about the fitness of the sentence in relation to denunciation and its effect on other people. Since the offence, you seem to have recognized some weaknesses in dealing with alcohol and managing anger, and have evidentially been able to perform at a level which has allowed you to retain the privilege of continuing to be a trusted senior non-commissioned officer in the Royal Canadian Regiment. You will need to continue these efforts. I truly wish you can maintain the confidence shown to you by the leadership of your unit as, indeed, the Army needs men like yourself.

FOR THESE REASONS, THE COURT:

[28] **FINDS** you guilty of the first charge under section 97 for drunkenness.

[29] **SENTENCES** you to a severe reprimand.

Counsel:

Major T.E.K. Fitzgerald, Canadian Military Prosecution Service, Counsel for Her Majesty the Queen

Major D.M. Hodson, Directorate of Defence Counsel Services, Counsel for Sergeant D.M. Sloan