COURT MARTIAL

Citation: *R v Landry*, 2014 CM 4006

Date: 20140715
Docket: 201419

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Corporal C.J. Landry, Offender

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

REASONS FOR SENTENCE

[1] Corporal Landry, having accepted and recorded your plea of guilty in respect of the first and only charge on the charge sheet, the court now finds you guilty of that charge under s. 116 of the *National Defence Act*, for wilful destruction of public property.

[2] It is now my duty as the military judge presiding at this Standing Court Martial to determine the sentence. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts relevant to this case as disclosed in the statement of circumstances and the materials submitted during the course of the sentencing hearing. I have also considered the submissions of counsel, both for the prosecution and for the defence.

[3] The military justice system constitutes the ultimate mean to enforce discipline in the Canadian Forces, and a fundamental element of the 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 punishment of persons subject to the Code of Service Discipline.

[4] 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 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, whether military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. Indeed, moderation is the bedrock principle of the modern theory of sentencing in Canada. What a sentencing judge must do is "impose a sentence commensurate to 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 must be adapted to the individual offender and the offence he or she committed.

[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 sentences, a sentencing judge 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; 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 and deterrence, both specific and general, as the sentence imposed should not only deter the offender but also others in a similar situation from engaging in the same prohibited conduct.

[10] Here the court is dealing with an offence of destruction of public property contrary to Section 116 of the *National Defence Act*. Indeed, members of the Canadian Forces are constantly entrusted with public property in the performance of their military functions. This offence recognizes the duty of each and every member to treat this property with care. That obligation is an important tenet of service in the Canadian Forces.

[11] Before the court is a 27 years old offender who initially joined the Primary Reserve of the Canadian Armed Forces in 2009, and arrived at the CF Logistics Training Centre in Borden for training as a Regular Force Supply Technician in August 2013. He has now completed his QL3 course and has been serving at the 5th Canadian Division Support Base Gagetown since 20 November 2013. He has a common law spouse.

[12] A statement of circumstances was read by the prosecutor and accepted as conclusive evidence by Corporal Landry. The circumstances of the offence are as follows:

> "At the time of the offence, the accused was a student at the Canadian Forces Logistics Training Centre (CFLTC) at Canadian Forces Base (CFB) Borden undergoing QL3 Sup Tech training.
>
> On 22 October 2013 after morning inspection, Corporal Landry punched a hole in the locker door of the bed space assigned to him. He immediately advised his superior of that fact. When asked why, Corporal Landry said that he was stressed and just did it.
>
> Corporal Landry co-operated with the unit investigators and voluntarily stated that he punched a hole through his locker door, that he did not know why; that

> he has been building up a lot of stress; that the lock was hard to lock; that he lost his patience and saw black.
>
> The total damage to the locker door was fixed at $83.88."

[13] In arriving at evaluating what would be a fair and appropriate sentence, the court has considered the objective seriousness of the offense which, as provided by section 116 of the *National Defence Act* is punishable by imprisonment for less than two years or to less punishment.

[14] The court considers aggravating, in the circumstances of this case, the subjective seriousness of the offence committed in that it occurred during training on base, and impacted on the unit which conducted the disciplinary investigation. Also, it was conceded that the presence on the offender's conduct sheet of a conviction for an offence under s. 129 of the *National Defence Act* for consuming alcohol contrary to Unit Standing Orders shows a pattern of misbehaviour at the time the offence now before the court was committed. Yet, the punishment related to that conviction was awarded on 25 October 2013, which is AFTER the offence now before the court was committed on 22 October 2013. As explained by the Court Martial Appeal Court in the case of *R v Castillo* 2003 CMAC 6, this conviction cannot be considered a previous conviction for sentencing purposes as it did not occur prior to the current offences under consideration.

[15] The court also considered the following mitigating factors, as mentioned in submissions by counsel and demonstrated by the evidence presented in mitigation, especially by defence counsel:

a. first and foremost, the offender's guilty 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. The offender collaborated with the investigation and communicated his plea early, thereby avoiding the expense of a trial. The fact that this admission of responsibility occurred in a very formal and public forum of this court martial is not insignificant in this case as indeed, the behaviour of the offender does not always or necessarily result in charges tried by military tribunals, as evidenced by the fact that counsel could not report to the court any precedent relating to a charge under s. 116 of the *National Defence Act* with similar circumstances.

b. secondly, the fact that the value of the property damaged has been established at $83.88, a relatively low amount that the offender has effectively reimbursed;

c. thirdly, the offender's record of service with the Canadian Forces. The offender's conduct sheet reveals that he has had behavioural problems in October 2013, during his Supply Tech course. Since that time however, the offender's performance in the Canadian Armed Forces has been assessed as very positive, as evidenced by the letter signed by Warrant Officer Neville

submitted by defence counsel, which shows that the offender has integrated remarkably well to his section, displays a calm and professional demeanour, takes direction very well, volunteers for branch and community activities and generally displays a positive attitude;

d. finally, the age and potential of the offender to make a positive contribution to Canadian society and the Canadian Armed Forces in the future, as evidenced by satisfactory service post offence, despite the pending charges and upcoming court martial.

[16] The prosecutor and defence counsel made a joint submission on the sentence to be imposed by the court. They recommended that this court imposes a sentence of a fine in the amount of $300 in order to meet justice requirements. Although this court is not bound by this joint recommendation, it has been determined by the Court Martial Appeal Court in *the case of R v Taylor* 2008 CMAC 1 at paragraph 21 that the sentencing judge cannot depart from a joint submission unless 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.

[17] In this case, the court has been told that precedents for this type of offences are rare. I have considered the precedent of *R v Bahadur* presented to me by counsel which, although the charge was laid under s. 97 for Drunkenness, relates to similar circumstances where a military member damaged public property while venting out frustration. This precedent allows me to appreciate the kind of punishment that would be appropriate in this case. Considering the nature of the offence, the circumstances it was committed, the applicable sentencing principles including a sentence imposed on another offender for a similar offence by a military tribunal, and the aggravating and mitigating factors mentioned previously, I am of the view that the punishment of a fine in the amount of $300, jointly proposed by counsel, is within the range of appropriate sentences in this case. The joint submission made by counsel is not contrary to the public interest and will not bring the administration of justice into disrepute. The court will therefore accept it.

[18] Corporal Landry, the circumstances of the charge you pleaded guilty to reveal a behaviour that is highly unacceptable in the Canadian Armed Forces, and you know this. Yet, you clearly have a future with the military as evidenced by the confidence expressed in you by your current supervisor, Warrant Officer Neville. I trust you won't disappoint him and others who believe in you by offending again.

FOR THESE REASONS, THE COURT:

[19] **FINDS YOU GUILTY** of the charge under s. 116 of the *National Defence Act* for wilful destruction of public property.

[20] **SENTENCES** you to a fine in the amount of $300, payable forthwith.

Counsel:

Major V. Ohanessian, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Maj C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Corporal C.J. Landry