



COURT MARTIAL

Citation: *R v Richard*, 2012 CM 4005

Date: 20120208

Docket: 201148

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Ex-Able Seaman J.S.L. Richard, Offender

Before: Lieutenant-Colonel J-G Perron, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Ex-Able Seaman Richard, you were originally charged with assault contrary to s. 266 of the *Criminal Code of Canada*, with drunkenness under s. 97 of the *National Defence Act*, with impaired operation of a motor vehicle contrary to s. 253(1)(a) of the *Criminal Code of Canada*, and with failing to comply with a condition imposed under Division 3 under s. 101.1 of the *National Defence Act*. The prosecutor, with the consent of the court, withdrew three of the charges. Having accepted and recorded your plea of guilty to charge number 2, drunkenness, the court now finds you guilty of this charge. The court must now determine a just and appropriate sentence in this case.

[2] The statement of circumstances to which you formally admitted the facts as conclusive evidence of your guilt provide this court with the circumstances surrounding the commission of this offence.

[3] During the evening of 13 November 2010, ex-Able Seaman Richard was in his room located on the third floor of Bernay's Block, Canadian Forces Base Esquimalt, together with his girlfriend who was visiting him from out of town, and they had in-

tended for her to remain overnight in his room. Ex-Able Seaman Richard consumed five "tall-boy" beers in his room and then together with his girlfriend they departed Bernay's Block at approximately 2200 hours. Ex-Able Seaman Richard drove the two of them in his vehicle to the Tudor House, a local drinking establishment. They then spent approximately three to four hours at that bar where additional alcoholic beverages were consumed. Ex-Able Seaman Richard consumed no less than two bottles of beer, numerous large draft beers, and at least one shot of Tequila. At that point he was in an intoxicated state and entered into a verbal argument with his girlfriend regarding his ability to drive them back to his room at Bernay's Block. He convinced her that he was fit to drive and she rode in the car with him.

[4] While driving to Bernay's Block ex-Able Seaman Richard experienced significant difficulty operating his vehicle. At one point his girlfriend had to place her hand on the steering wheel and take control of the vehicle in order to prevent it from colliding with other vehicles parked along the road. They eventually arrived at Bernay's Block without further incident.

[5] Upon arriving at his room they argued regarding his operation of a motor vehicle after having consumed alcohol. Their argument began as a verbal exchange; however, it rapidly escalated to the point where ex-Able Seaman Richard demanded that she depart his room. She refused as she had no other sleeping arrangements, at which point he began forcefully collecting her belongings and placing them in her travel luggage. She resisted and minor physical contact was made between ex-Able Seaman Richard and his girlfriend as he packed her belongings. He then attempted to open the door in order to throw her belongings out of the room, she pushed the door closed. This occurred several times as he attempted to eject his girlfriend and her belongings from his room.

[6] At this point ex-Able Seaman Richard pushed her and she fell backwards onto the bed. He then approached her with his arms outstretched and placed his hands around her throat and then restrained her wrists. She reacted in a defensive manner and pushed back at him, grabbing him around his neck and throwing him to the floor while telling him to "calm down." She did not fear for her safety; however, she did feel conflicted and helpless at times. After having restrained him, she decided that she wished to leave his room. However, he had now changed his mind and he wished her to remain. She tried several times to open the door; however, ex-Able Seaman Richard pushed it closed arguing for her to remain and that she had nowhere else to sleep that night. They both continued to argue. At approximately 0245, 14 November 2010, she succeeded in opening the door and commenced walking down the hallway while ex-Able Seaman Richard took her by the arm and attempted to persuade her to remain.

[7] The person residing in an adjacent room was awoken by the noise. Hearing their door open and close rapidly and the sound of their shouting and a woman crying, he feared that someone was in danger and he contacted emergency services. The military police responded and Petty Officer 2nd Class Tucker proceeded to the third floor where he observed ex-Able Seaman Richard holding the arm of his girlfriend who was

yelling, "let me go, let me go" in an emotional state and crying profusely. Petty Officer 2nd Class Tucker restrained ex-Able Seaman Richard, placing him in mechanical restraints and placing him in the rear seat of the military police patrol vehicle.

[8] While in custody overnight, ex-Able Seaman Richard continued to act in a belligerent and disruptive manner, swearing profusely at military police, and refusing to obey instructions given to him by the guardroom staff. This behaviour continued for several hours until ex-Able Seaman fell asleep.

[9] His girlfriend suffered no injuries as the result of this incident. Ex-Able Seaman Richard suffered numerous bruises to his neck and chest as a result of her use of force in self defence.

[10] As indicated by the Court Martial Appeal Court sentencing is a fundamentally subjective and individualized process where the trial judge has the advantage of having seen and heard all of the witnesses, when there are witnesses, and it is one of the most difficult tasks confronting a trial judge. (see *R v Tupper* 2009 CMAC 5 para 13)

[11] The Court Martial Appeal Court stated that the fundamental purposes and goals of sentencing is found in the *Criminal Code of Canada*¹ apply in the context of the military justice system and a military judge must consider these purposes and goals when determining a sentence. (see *R v Tupper* para 30) The fundamental purpose of sentencing is to contribute to respect for the law and the protection of society, and this includes the Canadian Forces, by imposing just sanctions that have one or more of the following objectives:

- a. to denounce unlawful conduct;
- b. to deter the offender and other persons from committing offences;
- c. to separate offenders from society, where necessary;
- d. to assist in rehabilitating offenders;
- e. to provide reparations for harm done to victims or to the community; and
- f. to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

[12] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[13] The sentencing provisions of the *Criminal Code*, ss. 718 to 718.2, provide for an individualized sentencing process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender. (see *R*

¹ R.S., 1985, c. C-46

v Angelillo 2006 SCC 55, at para 22) A sentence must also be similar to other sentences imposed in similar circumstances. (see *R v L.M.* 2008 SCC 31, at para 17) The principle of proportionality is at the heart of any sentencing. (see *R v Nasogaluak*, 2010 SCC 6, at para 41) The Supreme Court of Canada tells us that proportionality means a sentence must not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence.

[14] The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society. Discipline is one of the fundamental prerequisites to operational efficiency in any armed force.

[15] The prosecution and the defence counsel have jointly proposed a sentence of a reprimand and a fine in the amount of \$2,000. The Court Martial Appeal Court has stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[16] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I consider the following to be aggravating:

- a. you have a conduct sheet. You absented yourself without leave on 15 March 2011 and on 23 March 2011. You were tried by Summary Trial on 14 April 2011 and you were sentenced to a fine in the amount of \$400. Alcohol was involved in these absences; and
- b. you were irresponsible and a danger to others when you drove your vehicle from the Tudor House to Bernay's Block. You were violent and while it appears you suffered more injuries than you inflicted upon your girlfriend, you did assault her. While in no way condoning your actions vis-à-vis your girlfriend, I do not find that the evidence presented during this trial permits me to conclude that the situation falls within the definition of family violence as found at DAOD 5044-4, Family Violence. You continued to be violent with the military police and were disrespectful until you fell asleep at the guardhouse.

[17] As to the mitigating circumstances, I note the following:

- a. I agree with your counsel that, objectively, this offence is one of the least serious offences in the Code of Service Discipline. You have pled guilty. A plea of guilty will usually be considered as a mitigating factor. This approach is generally not seen as a contradiction of the right to silence and of the right to have the prosecution prove beyond a reasonable doubt the charge laid against the accused but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usu-

ally means that witnesses do not have to testify and that it greatly reduces the costs associated with the judicial proceeding. It is also usually means that the accused wants to take responsibility for his or her unlawful actions and the harm done as a consequence of those actions;

- b. you voluntarily attended the Edgewood facility for treatment of substance abuse disorder. I have reviewed the reports found at Exhibits 11 and 12. They describe your addictions since your teen years. You have quite the uphill road ahead of you. Hopefully, you now understand the dire situation you face and will invest the efforts to live an alcohol and drug free life. You provided the court with an undertaking to live a sober life. (see Exhibit 13) This undertaking is not worth the paper on which it is written unless you want to improve your life;
- c. you have been released under item 5f and your addiction problems are the root causes of your administrative release; and
- d. While neither counsel addressed the delay in bringing this charge to trial, the court did bring it to their attention. The prosecutor did provide some information concerning the delay. Lengthy delays do not serve the purposes of discipline and of military justice. They also often have a negative impact on the offender. Since the delay was not raised by either counsel, I will not consider this delay as a mitigating factor.

[18] I also agree with the prosecutor that denunciation and deterrence are the main sentencing principles that need to be applied in the present case. Having reviewed the totality of the evidence, the jurisprudence, and the representations made by the prosecutor and defence counsel, I have come to the conclusion that the proposed sentence would not bring the administration of justice into disrepute and that the proposed sentence is in the public interest. Therefore, I agree with the joint submission of the prosecutor and of your defence counsel.

FOR THESE REASONS, THE COURT:

[19] **FINDS** you, ex-Able Seaman Richard, guilty of the second charge under s. 97 of the *National Defence Act*.

[20] **SENTENCES** you to reprimand and a fine in the amount of \$2,000.

Counsel:

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

Lieutenant-Commander M.P. Létourneau, Directorate of Defence Counsel Services
Counsel for ex-Able Seaman J.S.L. Richard