Citation: *R. v. Corporal J.D.M. Picard,* 2007 CM 3002

Docket: 2006110

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE KINGSTON

Date: 16 January 2007

PRESIDING: LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

HER MAJESTY THE QUEEN
v.
CORPORAL J.D.M. PICARD
(Offender)

SENTENCE
(Rendered orally)

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[1] Corporal Picard, having accepted and recorded a plea of guilty in respect of the first and second charge, the court finds you now guilty of these charges. Corporal Picard, you may break off and sit with your defence counsel.

[2] 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 trusty and reliable manner, successful missions.

[3] As stated by a legal officer, Major Jean-Bruno Cloutier, in his thesis on the use of the section 129 of the *National Defence Act* offences, the military justice system, and I quote and translate, "... has for purpose, to control and influence the behaviors and ensure maintenance of discipline with the ultimate objective to create favorable conditions for the success of the military mission." The military justice system 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 been long recognized that the purpose of a separate system of military justice or tribunals 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. 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. 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 at QR&O article 112.48(2)(b).

[5] Here, in this case, the prosecutor and the counsel for the defence have made a joint submission on sentence. They have recommended that this court sentence you to a fine in the amount of $600. Although this court is not bound by this joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute.

[6] The court has considered the joint submission in light of the relevant facts set out in the statement of circumstances and the agreed statement of facts, and their significance, and I have also considered the joint submission in light of the relevant sentencing principles, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code,* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following: Firstly, the protection of the public, and the public includes the interests of the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and fourthly, the reformation and rehabilitation of the offender. The court has also considered the representations made by counsel, including the case law provided to the court, and the documentation introduced.

[7] I must say that I agree with the prosecutor when she expressed the view that the protection of the public must be ensured by a sentence that would emphasize general deterrence. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from re-offending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct. I am also of the view that principle of denunciation shall apply in this case. Here, the court is dealing with two offences involving two unauthorized absence of Corporal Picard to the morning physical training in February 2006 and to the 3 Squadron parade in June of the same year. It is not a serious offence, per se, as defined in the *National Defence Act*. Additionally, it may be considered a minor offence, if it falls in the parameters described at QR&O article 108.17(1). However, it is a purely military offence that goes to the heart of military discipline. Then, the court will still impose what it considers to be the necessary minimum punishment in the circumstances.

[8] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors.

[9] The court considers as aggravating:

a. firstly, the objective seriousness of the offence. The two offences you were charged with were laid in accordance with section 90 of the *National Defence Act* for being absented without leave. This kind of offence is punishable by an imprisonment for less than two years or to less punishment;

b. secondly, the subjective seriousness of the offence. The fact that you were an educated and experimented soldier, well trained at the rank of corporal, put on you the additional burden to lead by example, which you failed to do twice;

c. thirdly, the fact that you were under counselling and probation in order to correct your shortcomings concerning your lack of punctuality when the two offences were committed. Despite the fact that a clear message was sent to you by your superior concerning your conduct, you decided, conscientiously, to commit these offences instead of correcting your behaviour.

[10] The court considers that the following circumstances mitigate the sentence:

a. through the facts presented to this court, the court considers that your plea of guilty is a clear genuine sign of remorse and that you are very sincere in your pursuit of stay a valid asset to the Canadian community. The court would not want to jeopardize your chances of success because rehabilitation is always a key element when sentencing a person;

b. your record of service in the Canadian Forces. Except for these incidents, your service in the Canadian Forces was good. It appears to the court that you're a knowledgeable soldier with personal problems that affected your conduct to the extend that you were unable to behave with the usual expectations for people at your rank level;

c. the fact that you did not have a conduct sheet or criminal record related to similar offences;

d. article 112.48(2)(a) QR&O impose to the court the duty to consider any indirect consequences of the sentence. According to the facts submitted to this court, your lack of constantly failing to meet timings was dealt with through administrative actions, and it will finally result in releasing you from the Canadian Forces. Additionally, the court shall consider any impact that would result from the sentence imposed on you as the fact that you are one of the provider for your family and your financial situation;

e. the delay to deal with this matter. The court does not want to blame anybody in this case, but the closest the disciplinary matter is dealt with, the more relevant and efficient is the punishment on the morale and the cohesion of the unit members. Additionally, military justice would have been probably more expeditious if some consideration would have been given to deal with this kind of charge as a minor one. As one of the factor considered here, the time elapsed since these two incidents occurred, especially the first one, makes it less relevant to give consideration to a stronger or higher punishment. It still difficult for the court to understand why it took two months for the chain of command to process the first charge in order to refer it to the Director of Military Prosecution and to see it preferred only four months later;

f. the triviality aspect of the offences. Moreover, the court got a contradictory message when, on one side, the commanding officer seemed to consider very serious theses offences by giving twice an opportunity to the accused to be tried by court martial through the election process when it is not mandatory to do so, meaning by this that he considers that a punishment of detention, reduction in rank or a fine in excess of 25 per cent of monthly basic pay would not be warranted, if the accused was found guilty of the offences, and on the other side, a joint submission for both offences of a fine to the amount of $600 is made to this court martial. It looks like there is a disconnection between the chain of command's view and the prosecution's appreciation of the seriousness of these offences. However, considering my previous comments on the delay, the court still considers these offences as minor in the scale of punishment.

[11] Having said that, considering the factors and circumstances of this case, the court believes that the joint submission is not unreasonable.

[12] In consequence, the court will accept the joint submission made by counsel to sentence you to the punishment of a fine in the amount of $600, considering that it would not be contrary to the public interest, and would not bring the administration of justice into disrepute.

[13] Corporal Picard, please stand up. Therefore, the court sentences you to a fine in the amount of $600. The fine is to be paid in monthly installments of $200 each commencing on 1 February 2007, and continuing for the following two months. If you be released before the fine is paid in full, then the full amount will be due to the Canadian Forces prior to your release.

LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

Counsel:

Major S.A. MacLeod, Directorate of Military Prosecutions
Counsel for Her Majesty The Queen
Major L. D'Urbano, Directorate of Defence Counsel Services
Counsel for Corporal J.D.M. Picard