COURT MARTIAL

Citation: *R v Collins*, 2012 CM 4017

Date: 20121002
Docket: 201241

Standing Court Martial

HMCS SCOTIAN
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Petty Officer 2nd Class J.F. Collins, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Petty Officer 2nd Class Collins, having accepted and recorded your plea of guilty to charge No. 1, the court now finds you guilty of this charge laid under paragraph 125(a) of the *National Defence Act*. 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 and the Agreed Statement of Fact provide this court with the circumstances surrounding the commission of this offence. At the time of the offence you were employed as a watch supervisor onboard Her Majesty's Canadian Ship FREDERICTON. You attended Shearwater gym at Canadian Forces Base Halifax, Nova Scotia on 19 December 2011 where an EXPRES test had been booked in the name of Petty Officer 1st Class Morton. You proceeded to identify yourself as Petty Officer 1st Class Morton, completing the DND 279 CF EXPRES Program form using Petty Officer 1st Class Morton's personal details, including his service number, unit, date of birth, and

age. You then successfully completed the EXPRES test and signed the DND 279 CF EXPRES Program form using Petty Officer 1st Class Morton's identity.

[3] The DND 279 CF EXPRES Program form is used as part of the Canadian Forces minimum physical fitness standard and is a fitness assessment and record management system employed by the Canadian Forces to encourage individual physical fitness and to regularly assess and maintain an institutional record of the level of individual physical fitness of Canadian Forces members.

[4] As indicated by the Court Martial Appeal Court, sentencing is a fundamentally subjective and individualized process and it is one of the most difficult tasks confronting a trial judge. The Court Martial Appeal Court clearly stated that the fundamental purposes and goals of sentencing as found in the *Criminal Code of Canada* apply in the context of the military justice system and the military judge must consider these purposes and goals when determining a sentence.

[5] The fundamental purpose of sentencing is to contribute to the 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 in acknowledgment of the harm done to victims and to the community.

[6] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation or a combination of those factors. The sentencing provisions of the *Criminal Code*, sections 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. A sentence must also be similar to other sentences imposed in similar circumstances.

[7] The principle of proportionality is of the heart of any sentencing. Proportionality means that a sentence must not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offences. 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.

[8] The prosecution and your defence counsel have jointly proposed a sentence of a reprimand and a fine in the amount of $1,200 dollars to be paid in monthly instalments of $200. The Court Martial Appeal Court has stated clearly that a sentencing judge should not depart from a joint submission unless that proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[9] 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) section 125 of the *National Defence Act*, making a false entry in an official document is an objectively very serious offence since one can be sentenced to imprisonment for a term not exceeding three years or to less punishment in the Scale of Punishments. This is also a subjectively serious offence;

(b) this offence required some planning and preparations on your part;

(c) it was deceptive and it undermined an important aspect of military life; the annual physical fitness evaluation of each CF member;

(d) the CF relies on the honesty of every member in the general administration of this test;

(e) you were 42 years old at the time of the offence and had been a member of the Canadian Forces since 1990. You had enough experience to know what was expected of you; and

(f) you did fail to show the leadership qualities we expected of you. You occupied a position of leadership in your ships' company at the time of the offence.

[10] Your commanding officer has rightfully commented on the importance of trust in an operational unit and the drastic effects such offences do have on this key pillar of leadership and discipline. This is not the conduct we expect of our senior NCOs and it is not the conduct owed to your subordinates.

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

(a) you do not have a conduct sheet;

(b) you are a first time offender;

(c) you fully cooperated during the disciplinary investigation; and

(d) you indicated at the earliest occasion that you wished to plead guilty; therefore, such cooperation with a disciplinary investigation and a plea of guilty will usually be considered as mitigating factors.

[12] This approach is generally not seen as a contradiction of the right to silence and of the right to have the Crown prove beyond a reasonable doubt the charges laid against the accused, but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usually means that witnesses do not have to testify and that it greatly reduces the costs associated with the judicial proceeding. It is also usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions and the harm done is a consequence of those actions. By all accounts, you are truly remorseful.

[13] You did not benefit from this offence nor was it your objective. You committed this offence to help a friend. I use the word "friend" quite liberally and only refer to this person as a friend because this is how he is described in the Agreed Statement of Fact. He told you he had a medical condition that prevented him from completing the EXPRES test and that he needed a successful EXPRES test result in order to be promoted in the coming year.

[14] As the saying goes, the road to hell is paved with good intentions. It seems that you now realize you took that road. It is unfortunate for you, your subordinates, your unit, and the Canadian Forces that you did not realize it in December 2011. I agree with your counsel that this offence is out of character for you.

[15] You are and were suffering from chronic anxiety disorder at the time of the offence. In 2008, you were rated as an outstanding performer with outstanding potential and recommended for promotion following completion of your QL 6B course. At the time of the offence you were under a great deal of emotional distress due to a recent family illness and your third unsuccessful attempt at completing the QL 6B course required for promotion. You were placed on the remedial administrative measure of counselling and probation following the offence and have successfully completed the probationary period.

[16] It appears from the evidence before this court, namely the letter from your commanding officer and your doctor, that you have realized the errors you committed and you have taken the necessary steps not to repeat these errors.

[17] Petty Officer 2nd Class Collins, stand up. I have concluded that denunciation and general deterrence are the main sentencing principles that need to be applied in the present case, although the rehabilitation of the offender must also be considered. The evidence clearly shows there is no need for any specific deterrence in this case.

[18] Your doctor wrote that you will ruminate on this mistake for a prolong period of time. I strongly recommend you not do that; learn from this mistake, do not repeat it,

and carry on. You will be a much better person and a much better leader if you move on in a positive manner. Your commanding officer has commented favourably on the efforts you have shown since this offence. Don't beat your head against the wall, do as you have done to date; keep working hard and prove to yourself, to your subordinates, and to your superiors that you are the type of sailor and the type of leader that we need in the Royal Canadian Navy.

[19] Having reviewed the totality of the evidence, the jurisprudence, and the representations made by the prosecutor and your defence counsel, I have come to the conclusion that the proposed sentence would not bring the administration of justice into disrepute and 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:

[20] **SENTENCES** you, Petty Officer 2nd Class Collins, to a reprimand and a fine in the amount of $1,200. The fine shall be paid in monthly instalments of $200 starting on the 15th day of November, 2012.

Counsel:

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

Major J.L.P.L. Boutin, Directorate of Defence Counsel Services
Counsel for Petty Officer 2nd Class J.F. Collins