



COURT MARTIAL

Citation: *R. v. Sevker*, 2012 CM 4012

Date: 20120503

Docket: 201222

Standing Court Martial

Asticou Centre Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal S. Sevker, Offender

Before: Lieutenant-Colonel J-G Perron, MJ

REASONS FOR SENTENCE

(Orally)

[1] Corporal Sevker, having accepted and recorded your pleas of guilty to charges number one, three, four, and five, the court now finds you guilty of these charges.

[2] You have pled guilty to having disobeyed a lawful command of a superior officer, charge number one, of being absent without leave, charges number three and four, and of drunkenness, charge number five. The prosecutor withdrew two charges, charge number two, an act to the prejudice of good order and discipline, and charge number six, having failed to comply with a condition imposed under Division 3. He withdrew these charges with leave of the court. The court must now determine a just and appropriate sentence in this case.

[3] The statement of circumstances to which you formally admitted the facts as conclusive evidence of your guilt provides this court with the circumstances surrounding the commission of these offences.

[4] At the time of the offences you were a member of the Canadian Forces Network Operations Centre at Canadian Forces Station Leitrin, Ottawa, Ontario. You were involved in two car accidents on 5 February and 6 February 2012. On 11 February 2012 you were involved in a third car accident in the City of Ottawa. You were subsequently arrested by the Ottawa Police Service and charged with dangerous operation of a motor vehicle and possession of a controlled substance. You were released on a promise to appear and undertaking. A civilian court appearance was scheduled for 7 March 2012.

[5] On 27 February 2012 your unit decided you could no longer be employed on the operations floor of the Canadian Forces Network Operations Centre, and it was decided that you would be employed in the CFS Leitrin supply section.

[6] On 5 March 2012 you failed to report for duty at the CFS Leitrin supply section and you remained absent until your arrest on 15 March 2012. Knowing that you had an appearance scheduled in civilian court on 7 March 2012, two of your superiors, Lieutenant Dion and Master Warrant Officer Favreau, attended the Ottawa courthouse hoping to find you. Master Warrant Officer Favreau ordered you to report for duty at CFS Leitrin that day. You stated that you wanted to go to the Montfort Hospital to see your psychologist. Lieutenant Dion offered you a ride but you refused. Master Warrant Officer Favreau ordered you to fax him any paperwork that you received from the hospital or to call him and let him know the outcome of the visit. You did not report for duty on 7 March 2012 nor did you call Master Warrant Officer Favreau or send him any paperwork.

[7] On 9 March 2012 a warrant for arrest was issued by your commanding officer, Lieutenant-Colonel Tupper. On 11 March 2012, after many attempts, Master Warrant Officer Favreau was able to reach you by telephone. He ordered you to report for duty on 12 March 2012, you failed to do so.

[8] On 15 March 2012 you were taken into custody by the Gatineau police. You were turned over to the military police, who kept you in custody and subsequently brought you to your unit at CFS Leitrin. On 15 March you were released from custody by a custody review officer. At 0739 hours that day you were served with a record of disciplinary proceedings and you were informed of the right to elect trial by court martial. You were told to return to make your election at 0800 on 16 March 2012.

[9] On 16 March you failed to report for duty and to make your election. Another warrant for your arrest was issued by your commanding officer. You remained absent until your arrest on 2 April 2012. On that day the Ottawa Police Service were dispatched to the Ottawa bus terminal as there was a report of an unconscious male at that location. Realizing there was an outstanding arrest warrant the Ottawa Police Service arrested you and contacted the military police. At the time of your arrest, you were in possession of a bus ticket for Niagara Falls, Ontario.

[10] At 1015 hours on 2 April, Corporal Lefebvre of the military police arrived at the Ottawa Police Service station on Elgin Street to take custody of Corporal Sevker. You

had to be supported as you walked to the car since you could not walk properly and were stumbling. You were not coherent and you were having difficulty forming sentences. You were under the influence of a drug.

[11] At 1150 hours that day, you were placed in the custody of Corporal Russell, a military policeman from CFB Petawawa. Upon arriving in Petawawa, Corporal Russell searched you and found seventy-five 10 milligram pills of Temazepam, a Schedule IV substance under the *Controlled Drugs and Substances Act*. Corporal Russell also discovered 67 so-called dime-bags which are commonly used in drug trafficking. Corporal Russell re-arrested you on a civilian information for possession for the purposes of trafficking and failure to comply with the conditions of an undertaking. With respect to the civilian criminal charges, Corporal Russell released you on a promise to appear and an undertaking. You were retained in custody with respect to the arrest warrant because of the belief that you would continue to be absent without leave

[12] At 1630 hours on the 3rd of April, a custody review officer determined that you should be retained in custody. On 5 April you were released from custody by a military judge upon signing an undertaking.

[13] 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.

[14] 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 a military judge must consider these purposes and goals when determining a sentence.

[15] 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: to denounce unlawful conduct; to deter the offender and other persons from committing offences; to separate offenders from society where necessary; to assist in rehabilitating offenders; to provide reparations for harm done to victims or to the community; and, to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community. The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[16] 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. The principle of proportionality is at 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 offence. 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.

[17] The prosecution and your defence counsel have jointly proposed a sentence of detention for a period of 11 days. They suggest that 15 days would be appropriate, but have deducted the four days of pre-trial custody you have already served. The prosecutor recommends that you serve this sentence at the Canadian Forces Service Prison and Detention Barracks and you do not object to this recommendation. 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.

[18] 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) The offence of disobeying a lawful command of a superior officer is objectively one of the most serious offences under the Code of Service Discipline since the maximum sentence is imprisonment for life. Article 19.015 of the Queen's Regulations and Orders provides that:

"Every officer or non-commissioned member shall obey lawful commands and orders of a superior officer;"
- (b) The bedrock of any military force is its discipline. Discipline is defined in the Oxford Dictionary as:

"The practice of training people to obey rules or a code of behaviour;"
- (c) Objectively this offence is also serious. You disobeyed a very clear and simple order from a master warrant officer who was ordering you to report to your place of duty. You were also absent without leave at the time of that order;
- (d) You were absent without leave from 5 March until 15 March 2012 and from 16 March until 2 April 2012. On both occasions these absences without leave ceased only because you were arrested by the police;
- (e) Your absences had a negative impact on your unit. Members of your unit had to fill your unexpected vacancy and your superiors had to modify the work schedule of other shifts accordingly. Your absences had a negative impact on your fellow shift members as well as on other members of your unit in other shifts;

- (f) Your drunkenness was caused by drugs and not alcohol. While impairment due to excessive use of alcohol is not tolerated by the Canadian Forces, the Canadian Forces have a much stricter approach to the use of illicit drugs. Simply put, any use of an illicit drug is not tolerated by the Canadian Forces and is usually punished more severely than by a Canadian criminal court.

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

- (a) You do not have a conduct sheet. You are a first-time offender;
- (b) You have pled guilty to the four charges therefore a plea of guilty is usually considered a mitigating factor. 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 as a consequence of these actions;
- (c) I have reviewed the two personnel evaluation reports for the reporting periods of 2009/2010 and 2010/2011, found at Exhibits 9 and 10, and the two course reports found at Exhibits 7 and 8. It is stated in your 2010/2011 personnel evaluation report that you are ready for a promotion to master corporal. It appears from that evidence, as well as from the testimony of Chief Warrant Officer Bastien, your unit chief warrant officer, that you were an excellent performer until the end of 2011. You were named the member of the quarter in September/October 2011 and you were deemed to be reliable and dedicated until February 2012. Chief Warrant Officer Bastien stated you would be gainfully employed by your unit, but will not be given a job that requires a security clearance;
- (d) You have also been an active member of your unit social activities (see Exhibit 11);
- (e) Since you were charged with drug related charges, an administrative career review is underway. It appears your commanding officer believes you can still be a productive member of the Canadian Forces since he has recommended that you be placed under counselling and probation instead of recommending your release from the Canadian Forces;

- (f) Exhibit 5, the view pay entitlement, indicates that you were not paid for the period of May 2012. Therefore, you were not paid for the period of your absences without leave.

[20] Corporal Sevker, you appeared to have a very promising career until early 2012. You seem to have fallen under the influence of drugs. I have not been provided with an explanation for this apparently radical change in behaviour. I have not been provided any information concerning your efforts, if any, to face your problems and find your way back to a successful life and a successful career. Your commanding officer and your chain of command know you much better than I do. It appears your commanding officer believes you can improve with some assistance and again provide his unit and the Canadian Forces with the excellent work and results that you did provide in the past.

[21] I believe the sentence I am about to pronounce will assist you in learning the lessons and habits that you had initially gained when you joined the Canadian Forces. The rest of the work must be done by you. If you realize you need help and you are willing to accept the help your unit and the Canadian Forces are willing to provide you, then you might be able to overcome your obstacles and show us who you really are.

[22] I agree with the prosecutor that denunciation and specific deterrence are the 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 your defence counsel, I have come to the conclusion that the proposed sentence is adequate considering the specific circumstances of the offences and of the offender. I have thus 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 prosecution and of your defence counsel.

[23] Corporal Sevker,

FOR THESE REASONS, THE COURT

[24] **FINDS** you guilty of one charge under section 83 of the *National Defence Act* for disobeying a lawful command of a superior officer, guilty of two charges under section 90 of the *National Defence Act* for absenting yourself without authority, and guilty of one charge under section 97 of the *National Defence Act* for drunkenness, and

[25] **SENTENCES** you to detention for a period of 11 days to be served at the Canadian Forces Service Prison and Detention Barracks in Edmonton, Alberta.

Counsel:

Major E. Carrier, Canadian Military Prosecution Service
Counsel for Her Majesty, the Queen

Major S. Collins and Major A. Reed, Directorate of Defence Counsel Services
Counsel for Corporal S. Sevker