COURT MARTIAL

Citation: *R v Squires*, 2013 CM 2016

Date: 20131127
Docket: 201369

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Corporal K.L. Squires, Offender

Before: Colonel M.R. Gibson, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Corporal Squires has admitted his guilt to one count of absence without leave under section 90 of the *National Defence Act*. The court must now impose a fit and just sentence.

[2] The Statement of Circumstances entered into evidence by the prosecution, and agreed to by defence counsel on behalf of Corporal Squires, indicates the following facts.

[3] Corporal Squires is a Regular Force infantryman. He is a member of the 3rd Battalion, Royal Canadian Regiment (3 RCR) at Canadian Forces Base Petawawa.

[4] On Thursday 31 January 2013, Corporal Squires was present when one of his superiors, Sergeant Christensen, gave timings to Corporal Squires' platoon for the next

morning. At 0800 hours Friday, 1 February 2013, Corporal Squires was absent from the morning parade at 3 RCR. At 0900 hours the following day, Saturday, 2 February 2013, Corporal Squires phoned his company Sergeant-Major, Master Warrant Officer Cushman, to report himself.

[5] The Canadian Forces Conduct Sheet for Corporal Squires (Exhibit No. 6 in evidence) indicates three previous convictions at summary trial for *NDA* section 90 Absented himself without leave offences, relating to incidents in August, September and October 2012. There is also a conviction for a section 129 offence relating to the use of cocaine. The sentence for the last two offences, given on 4 December 2012, was detention for 20 days.

[6] Counsel for the prosecution and defence are far apart on their recommendations as to sentence. The prosecutor submits that an appropriate sentence would be one of dismissal from Her Majesty's service, or, if that is not accepted, reduction in rank. The defence counsel submits that the appropriate sentence would be either a reprimand, or a fine in the range of $1200 to $1400 dollars, payable in monthly instalments.

[7] For the reasons that follow, I consider that the appropriate sentence on the facts of this case lies somewhere in between the outer extremes of the positions submitted by the prosecution and the defence.

[8] The fundamental purposes of sentencing by service tribunals in the military justice system, of which courts martial are one type, are: to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and to contribute to respect for the law and the maintenance of a just, peaceful and safe society.

[9] The fundamental purposes are achieved by the imposition of just sanctions that have one or more of the following objectives: to promote a habit of obedience to lawful commands and orders; to maintain public trust in the Canadian Forces as a disciplined armed force; to denounce unlawful conduct; to deter offenders and other persons from committing offences; to assist in rehabilitating offenders; to assist in reintegrating offenders into military service; to separate offenders, if necessary, from other officers or non-commissioned members or from society generally; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community.

[10] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[11] Other sentencing principles include: a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances; a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances; a sen-

tence should be the least severe sentence required to maintain discipline, efficiency and morale; and any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[12] In the case before the court today, I must determine if the sentencing purposes and objectives would best be served by deterrence, denunciation, rehabilitation, or a combination of these factors.

[13] Offences such as the section 90 offence of being absent without leave in this case are aimed to protect and preserve the core values of military discipline. The punishments imposed should emphasize the objectives of general and specific deterrence, as well as denunciation of the unlawful conduct. The sentence given by the court should also be tailored to meet the objectives of rehabilitating offenders and assisting their reintegration into military service, where appropriate.

[14] The court must impose a sentence that is of the minimum severity necessary to maintain discipline, efficiency and morale. Discipline is that quality that every Canadian Forces member must have that allows him or her to put the interests of Canada and of the Canadian Forces before personal interests. This is necessary because members of the Canadian Forces must promptly and willingly obey lawful orders that may potentially have very significant personal consequences, up to injury or even death. Discipline is described as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training and practice, it is something that must be internalized, as it is one of the fundamental prerequisites to operational effectiveness in any armed force.

[15] The court considers that the aggravating factors in this case are the following:

(a) that Corporal Squires violated one of the most important obligations of members of the Canadian Forces, to be present where they are required to be, reliably and on time. While the objective gravity of the offence under section 90 of the *National Defence Act*, which is punishable by imprisonment for less than two years, is towards the lower end of the scale amongst the offences created in the *National Defence Act*, the reality is that this offence provision is one of the key tools for maintaining discipline in the Canadian Forces at the unit level;

(b) secondly, the previous convictions of Corporal Squires for substantially similar offences in the recent past disclosed on the conduct sheet, and the pattern of continuing conduct in this regard notwithstanding the escalation of sentences; and

(c) thirdly, the impact on his unit in terms of the distraction and diversion of resources from other purposes arising from Corporal Squires' misconduct.

[16] Taken together, the offence to which Corporal Squires has now pleaded guilty, in conjunction with the previous similar offences indicated on the conduct sheet, show that he has not yet mastered the concept of self-discipline or of being a responsible and trustworthy member of the Canadian Forces.

[17] The mitigating factors in this case include the following:

(a) first and foremost, that Corporal Squires accepted responsibility for the offence by entering a guilty plea, which is always an important mitigating factor;

(b) that Corporal Squires accepted responsibility for the offence by reporting himself to his superior in the first instance;

(c) that Corporal Squires has been diagnosed as suffering from Post Traumatic Stress Disorder arising from his service in Afghanistan, and that there is a concern relating to the continuity of his medication should a custodial sentence be imposed;

(d) that he has financial obligations in respect of his young family;

(e) his attitude and willingness to be helped in respect of his medical treatment and therapy.

[18] I would like to emphasize two points in relation to the issue of PTSD. There is no evidence before the court that medical or therapeutic care provided at the Canadian Forces Prison and Detention Barracks would in any way be inadequate to effectively monitor or deal with issues related to medication for Corporal Squires. Second, the evidence presented in this case, including the testimony of Corporal Squires himself, and the submissions of his defence counsel, do not indicate that Corporal Squires' diagnosis of PTSD played a direct role in his commission of the offence to which he has plead guilty, nor that it should preclude consideration of a custodial sentence. Thus, while the court considers that it is appropriate to take it into account as a mitigating factor, on the facts of this case it is not a dispositive factor.

[19] I consider that the cases submitted by the prosecution in which dismissal was the sentence imposed are readily distinguishable from this case on their facts; they involved more offences, in more serious circumstances.

[20] Equally, the cases submitted by defence counsel in which only fines were imposed, are also distinguishable on their facts.

[21] I consider that imposing the punishment of dismissal would be too harsh on the facts of this case, and would overshoot the mark in terms of what is required to maintain discipline, efficiency and morale. I am also required to take into consideration any indirect consequences of the sentence. In this regard, the financial impact of the punish-

ment of dismissal on Corporal Squires' family, and its potential consequences for his ongoing medical treatment and therapy, are of concern.

[22] The punishment of reduction in rank reflects a judgment that an offender has, through his or her conduct, demonstrated that they are unsuited or unworthy to hold their present rank. This attribute would seem to be apt to the facts of the present case in respect of the continuing conduct of Corporal Squires, culminating in his conviction for the offence before the court.

[23] I would like to address several remarks to the submission of defence counsel regarding the impact of the passage by Parliament of Clause 75 of Bill C-15 (known as the *Strengthening Military Justice in the Defence of Canada Act*), enacted as S.C. 2013, Chapter 24. This will amend the *National Defence Act* by creating a new section 249.27 in the *Act*. Counsel correctly noted that this section of the Bill has not yet been brought into force by Order of the Governor in Council. But she submitted that, because the provision of that section indicates that it will have retroactive application once brought into force, Corporal Squires should not be deprived of the potential benefit it confers of not creating a record within the meaning of the *Criminal Record Act* in respect of convictions in the circumstances specified in that section. She submits that the wording of the section permits its application only in respect of a single type of punishment; the effect of this, she submits, should incline the court toward only either a reprimand, or a fine, but not both.

[24] I do not think that the analysis of this new section presented by defence counsel is correct. It is not consistent with a plain and purposive reading of the wording of the section. And, it omits to consider the impact of section 139(2) of the *National Defence Act*, which provides:

> Where a punishment for an offence is specified by the Code of Service Discipline and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

[25] In assessing the intent of the new section 249.27, it must be read together with the existing wording of section 139(2). In creating the offence of absence without leave at section 90 of the *National Defence Act*, Parliament has provided at section 90(1) that:

> Every person who absents himself without leave is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

[26] I thus do not consider that in creating the new section 249.27, Parliament meant in any way to exclude a sentence which, in respect of the offences enumerated at section 249.27(1)(a), combines more than one of the punishments of severe reprimand, a reprimand, a fine not exceeding basic pay for one month, or a minor punishment specified at section 249.27(1)(a) (i) through (iv), from conferring the benefit intended by the section of not creating a record within the meaning of the *Criminal Records Act*.

[27] In any event, this issue does not affect the determination of sentence in the present case, because I consider that the proposed punishments of a reprimand or a fine, whether taken singly or in conjunction, would be inadequate to accomplish the goals of sentencing which should apply to this case on its facts.

[28] In sum, having regard to the hierarchical nature of the scale of punishments set out by Parliament at section 139 of the *National Defence Act*, in the present case the court considers that the punishment of dismissal would be too harsh, and the punishments of reprimand and fine, whether singly or in conjunction, would be inadequate.

FOR THESE REASONS, THE COURT:

[29] **FINDS** you guilty of the charge under section 90 of the *National Defence Act*.

[30] **SENTENCES** you to reduction in rank from corporal to private.

Counsel:

Major A-C Samson, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Commander D. Liang, Directorate of Defence Counsel Services
Counsel for Corporal K.L. Squires