Citation: *R. v. Private D. R. Parcher,* 2007 CM 3016

Docket: 200762

STANDING COURT MARTIAL
CANADA
CANADIAN FORCES BASE EDMONTON
EDMONTON

Date: 10 October 2007

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

HER MAJESTY THE QUEEN
v.
PRIVATE D.R. PARCHER
(Offender)

SENTENCE
(Rendered orally)

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[1] Private Parcher, 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.

[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 Major Jean-Bruno Cloutier in his thesis on the use of the section 129 *National Defence Act* offences, the military justice system, and I quote and translate, "... has for purpose, to control and influence the behaviours and ensure maintenance of discipline with the ultimate objective to create favourable 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 long been 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 offences and the previous character of the offender," as stated at QR&O article 112.48 (2)(*b*). 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 reprimand.

[5] 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've also considered the joint submission in light of the relevant sentencing principles, including those set out in sections 718, 718.1, 718.2 of the *Criminal Code,* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. The court also considered the principles in section 719(3) of the *Criminal Code,* considering that pre-trial custody is an issue in this case.

[7] These principles are the following: Firstly, the protection of the public and the public includes the interest 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.

[8] I must say that I agree with the prosecutor when he expressed the view that the protection of the public must be ensured by a sentence that would emphasize general deterrence and denunciation. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from reoffending, but also others in similar situations from engaging, for whatever reason, in the same prohibited conduct. Here, the court is dealing with two offences involving the unauthorized absence of Private Parcher from his unit for a period of about one day in July 2007, and 22 days in August 2007. It is a serious and purely military offence that goes to the heart of military discipline. Then, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

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

a. Firstly, the objective seriousness of the offence. The offences you were charged with were laid in accordance with section 90 of the *National Defence Act* for being absented without leave. These offences are 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 AWOL for a long period of time, concerning the second offence, has to be considered as a very serious matter in the circumstances.

c. Thirdly, your record of service in the Canadian Forces. You were previously found guilty at three different times for the same offence. The repetitive nature of the offence you are charged with and to which you pleaded guilty does reveal a serious problem of attitude toward your superiors and it demonstrates clearly the disrespect you have for discipline.

d. The fact that you had to be arrested, further to the issuance of a warrant for arrest, in order to stop the commission of the second offence.

[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 sincere in your pursuit of staying a valid asset to the Canadian community.

b. The fact that you spent 32 days in pre-trial custody. The *National Defence Act* does not specify the sentencing principles for determining the appropriate sentence by a military tribunal in the military justice system. That is the reason why, as mentioned earlier, this court relies on the relevant sections of the *Criminal Code* in order to do so, when those principles are applicable. In the specific circumstances of this case, considering the time you spent in custody before your trial took place, the principle enunciated at section 719(3) of the *Criminal Code* must receive

application. As mentioned by the Supreme Court of Canada in the decision of *R*. v. *Wust*, [2000] 1 S.C.R. 455 at paragraph 41, the pre-trial custody time is part of the punishment. Then, it allows the court to consider it as a factor while determining the appropriate sentence, as mentioned by the New Brunswick Court of Appeal in its decision of *R*. v. *Doiron*, 194 C.C.C. (3d) 468 at paragraph 22:

> First, s. 719(3) allows the sentencing court to take pre-sentence custody into account in fashioning an appropriate sentence ...

The court then considers as a serious mitigating factor the fact that you spent 32 days in pre-trial custody. It also means that this court firmly believes that no additional detention is required in these circumstances, considering the fact that otherwise, 30 days' detention would have been appropriate.

c. The fact that further to your arrest, you started to consider, more seriously, solving your addiction problems to drugs and alcohol while you were detained, which you did by consulting a social worker and psychiatrist. You still have to work on it, which you seem to have done by contacting the Narcotics Anonymous in Saint John's Newfoundland.

d. Your personnel situation and your steps to find support in order to go through some personnel challenges. You were recently married and you have a five year old child from a previous relationship.

e. The fact that you secured a job and that you will soon be living again with your wife are positive signs. The court encourages you to continue to do so.

[11] Article 112.48(2)(*a*) in the QR&Os impose to the court the duty to consider any indirect consequences of the sentence. According to counsel, most of the problems concerning your conduct in the Canadian Forces were dealt with, in a way, through administrative actions that will finally result in releasing you soon from the Canadian Forces. Additionally, being out the Canadian Forces, the court shall consider any impact that would result from the sentence imposed on you.

[12] Private Parcher, the court still wonders about what will happen to you when you will leave the Canadian Forces. Returning to civilian life with the kind of passage you had within the Canadian Forces does not make it easy on you. The court

hopes that you will be able to put behind you what happen, and that you will manage things in a way that will keep you away from personal problems involving drugs or alcohol. The court encourages you to continue to consult appropriate people in Saint John's in order to continue what you started for yourself in the Canadian Forces while you were detained.

[13] Considering the factors and circumstances specific to this case, the court believes that the joint submission is not unreasonable. In consequence, the court will accept the joint submission made by counsel to sentence you to the punishment of a reprimand, considering that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[14] Private Parcher, stand up. Therefore, the court sentences you to a reprimand.

[15] Officer of the Court, march out Trooper Parcher. The proceedings of this Standing Court Martial in respect of Private Parcher are terminated.

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

Counsel:

Captain R.J. Henderson, Regional Military Prosecutions Western Area
Counsel for Her Majesty the Queen
Lieutenant(N) S.C. Leonard, Directorate of Defence Counsel Services
Counsel for Private D.R. Parcher