



## COURT MARTIAL

**Citation:** *R v Canning*, 2012 CM 4018

**Date:** 20121029

**Docket:** 201249

Standing Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Petty Officer 1st Class G. Canning, Offender**

**Before:** Lieutenant-Colonel J.-G. Perron, MJ

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### **REASONS FOR SENTENCE**

Orally

[1] Petty Officer 1st Class Canning, having accepted and recorded your plea of guilty to charge number 2, the court now finds you guilty of this charge laid under section 129 of the *National Defence Act*. You have pled guilty to using cannabis marijuana, contrary to article 20.04 of the *Queen's Regulations and Orders*. 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 provides this court with the circumstances surrounding the commission of this offence. At the time of the offence, you were posted to Her Majesty's Canadian Ship Winnipeg, at Canadian Forces Base Esquimalt.

[3] At approximately 2200 hours on Friday, 23rd of March, 2012, you were stopped at a roadblock in Victoria, British Columbia by a constable of the Capital Regional District Integrated Road Safety Unit. You were the sole occupant of the vehicle. The constable smelled an odour of fresh marijuana from your vehicle. The constable advised you that you were under arrest for possession of a controlled substance and provided

you with your *Charter* rights. A search incident to arrest was conducted and a clear bag containing two individually wrapped bags of marijuana and a marijuana cigarette, mixed in with a package of cigarettes, were found in your vehicle.

[4] Having found your military identification card, the constable called the military police. You were arrested by the military police and brought to CFB Esquimalt. During an interview, you told the military police that you had purchased \$40 worth of marijuana earlier that day. Throughout the interview, you were cooperative with the investigator. The seized substance weighed 7.5 grams.

[5] 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.

[6] 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. 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:

- (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 to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[7] 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. The principle of proportionality is at the heart of any sentencing. Proportionality means 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.

[8] 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.

[9] The prosecution and your defence counsel have jointly proposed a sentence of a severe reprimand and a fine in the amount of \$2500 to be paid in monthly instalments of \$250. 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.

[10] 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 129 of the *National Defence Act*, prejudice to good order and discipline, is an objectively serious offence since one can be sentenced to dismissal with disgrace from Her Majesty's service or to lesser punishment. This is also a subjectively serious offence. You were fully aware of the Canadian Forces strict policy on the use of illegal drugs. Any use of illegal drugs is a serious breach of the Code of Service Discipline and cannot be tolerated in the Canadian Forces. You stated during your interview with the military police that you had smoked marijuana for the past five years but that you had never used the drug during the week;
- (b) You were 41 years old at the time of the offence and had been a member of the Canadian Forces since 1991; you had enough experience to know what was expected of you. You occupied a position of leadership in your ship's company at the time of the offence. Your commanding officer has rightfully commented on the significant deleterious effects of this offence on your ability to assume leadership roles in the near future. This is not the conduct we expect of our senior non-commissioned officers 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. You are a first time offender. You fully cooperated during the investigation. You indicated at the earliest occasion that you wished to plead guilty. Therefore, such cooperation with an investigation and a plea of guilty will usually be considered as mitigating factors. This approach is generally not seen as a contradiction of the right to silence and of the right to have the prosecution prove beyond a reasonable doubt the charge 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 responsi-

bility for his or her unlawful actions and the harm done as a consequence of these actions. You appear to be truly remorseful.

- (b) This offence did not occur on a defence establishment, you were not on duty and it did not involve other Canadian Forces members. Also, while the use of illegal drugs is always unacceptable, we are dealing with a small amount, specifically 7.5 grams;
- (c) You received radiation treatments in 2006 for pharyngeal cancer which led to chronic pain in your neck. A cervical disc disease has also increased the pain in your neck. You used marijuana to relieve the pain you were experiencing. You also have been treated for intermittent anxiety disorder. While this explains why you chose to smoke marijuana, it does not excuse your decision and your actions;
- (d) You were placed on the remedial administrative measure of counselling and probation in May 2012 for a period of 12 months. Your commanding officer has recommended that you be retained in the Canadian Forces. Your chain of command is in a much better position than the court to assess your potential as a contributor to the success of the Canadian Forces. It appears your commanding officer believes you possess the qualities necessary to learn from this error and to improve. Your commanding officer is of the opinion that you can cease using marijuana; thus, it would appear the probability of re-offending is low and that you are a good candidate for rehabilitation.

[12] Petty Officer 1st Class Canning, stand up. I have concluded that general deterrence is the main sentencing principle that needs to be applied in the present case, although the rehabilitation of the offender must also be considered.

[13] Having reviewed the totality of the evidence, the jurisprudence and the representations made by the prosecutor and your defence counsel, 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 prosecutor and of your defence counsel.

**FOR THESE REASONS, THE COURT:**

[14] **FINDS** you guilty of the second charge of conduct to the prejudice of good order and discipline.

[15] **SENTENCES** you to a severe reprimand and a fine in the amount of \$2,500. The fine shall be paid in monthly instalments of \$250 starting on the 15th day of November, 2012.

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**Counsel:**

Lieutenant-Commander P. Desbiens, Directorate of Defence Counsel Services  
Counsel for Petty Officer 1st Class G. Canning

Lieutenant-Commander S. Torani, Canadian Forces Prosecution Services  
Counsel for Her Majesty the Queen