



COURT MARTIAL

Citation: *R v West, 2013 CM 1013*

Date: 20131016

Docket: 201281

Standing Court Martial

19 Wing Comox
British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal S.K. West, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal West has pleaded guilty to an offence under section 129 of the *National Defence Act* for an act to the prejudice of good order and discipline. The particulars of the charge read as follows: "In that he, on or about 12 August 2011, at or near Motta Sant' Anastesia, Italy, consumed alcoholic beverages within a period of eight hours prior to driving a vehicle, contrary to Task Force LIBECCIO Standing Order 104."

[2] The circumstances surrounding the commission of the offence indicate Master Corporal West is an intelligence operator who was deployed on OP MOBILE as part of Task Force LIBECCIO assigned to the detachment at Sigonella, Italy. On 12 August 2011, Master Corporal West was not required to work at his place of duty. In the late morning or early afternoon of 12 August 2011 he went to a nearby beach with two other

detachment members. Master Corporal West drove in a vehicle to the beach in a Task Force vehicle. While at the beach, between when he arrived and when he departed some time before 1700 hours, Master Corporal West consumed four or five beers. He then drove the vehicle back to his passengers' apartment, from the beach, with them onboard. Over the course of the next few hours, Master Corporal West consumed three or four more beers.

[3] At approximately 2000 hours, he left his colleagues and went to a pool party at the apartment complex where he stayed. He remained there for approximately 90 minutes and consumed more alcoholic beverages during that time. From there, he returned to his own apartment, where he drank more alcohol. At some point after 2200 hours on 12 August 2011, Master Corporal West left his apartment complex, driving the same vehicle. On his way out of the town, driving toward the main regional highway, he began to adjust his vehicle's radio, taking his attention from his surroundings and his driving tasks. As a result of this inattention and his prior consumption of alcohol, Master Corporal West drove the vehicle off the road into a ditch, where he hit a road-side cactus. This accident caused damage to the front driver's side fender, headlight and hubcap of the vehicle, and tore the driver's side-view mirror off.

[4] Master Corporal West did not immediately report the accident but he did shortly after, where he admitted that the accident had occurred on the night of 12 August, and he provided more details about the actual circumstances.

[5] The Task Force LIBECCIO Standing Orders that were in force at that time provided, at sub-paragraphs 104.02 and 104.03 that:

"104.02. Personnel may consume a maximum of two alcoholic drinks per day. A "day" is defined as any 24 hour period. A "drink" is defined as one 12 ounce/341 ml bottle of beer containing 5% alcohol, one 5 ounce/150 ml glass of wine or 1.5 ounce/45 ml of liquor.

104.03 Personnel shall not consume any alcoholic beverages for a period of 8 hours prior to reporting for duty nor prior to driving a vehicle, and in no case shall they exceed two drinks per day."

[6] Master Corporal West was made aware of the Task Force LIBECCIO Standing Orders. He had received a briefing on arrival in theatre that included, among other things, reference to the applicable Task Force Standing Orders. Those Standing Orders were posted in two accessible locations and Master Corporal West had also been specifically reminded of the content of the Task Force Standing Orders relating to alcohol consumption by his supervisor earlier in his tour.

[7] Counsel for the prosecution and defence made a joint submission on sentence. They recommend that Master Corporal West be sentenced to a reprimand and a fine in the amount of \$1000. Although, the court is not bound by this joint submission, appellate courts have constantly affirmed that a trial court can only reject such a joint sub-

mission if it is contrary to the public interest or if the sentence would bring the administration of justice into disrepute. This is not the case here.

[8] In sentencing Master Corporal West I have considered the applicable sentencing purposes, principles and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*.

[9] The aggravating factors in this case are:

- (a) The objective seriousness of the offence. A person convicted of an offence under section 129 of the *Act* is liable to dismissal with disgrace from her Majesty's Service.
- (b) The subjective seriousness of the offence as described in the statement of circumstances of this case, including the operational setting and the fact that he was deployed overseas as a member of the Canadian Forces, and that the improper drinking included the use of a motor vehicle, which was also slightly damaged in an accident.
- (c) Thirdly, the inherent diplomatic problems that may have been created by the consequences of the improper drinking in a foreign country.

[10] Let us now move to the mitigating factors, and they are very compelling in this case:

- (a) First, the guilty plea at the first opportunity and the cooperation with unit authorities during the investigation. To me, it is a clear indication of the acceptance of responsibility and an indication of remorse.
- (b) Second, Master Corporal West has no previous or criminal disciplinary record.
- (c) Third, he has had an otherwise exemplary and productive career in the Canadian Forces and within his community as mentioned by defence counsel. He is a fine person who has made a serious error in judgment, which appears to be rationally linked to his medical condition
- (d) And finally, I considered the upcoming medical release from the Canadian Forces because of post-traumatic stress disorder.

[11] In conclusion, I agree with counsel that the proposed sentence is a fit sentence in the circumstances and it is not so off the mark that its adoption by this court martial

would be contrary to the public interest or bring the administration of military justice into disrepute. The proposed sentence is certainly adequate to meet the objectives sought by the prosecution; namely, general deterrence, specific deterrence and rehabilitation.

FOR THESE REASONS, THE COURT:

[12] **FINDS** the offender, Master Corporal West, guilty of the second charge under section 129 of the *National Defence Act*; and

[13] **SENTENCES** the offender, Master Corporal West, to a reprimand and a fine in the amount of \$1000, payable in two equal monthly instalments of \$500 commencing 15 November 2013. Should the member be released prior to the full payment of the fine imposed, it will become payable in full at the effective date of release.

Counsel:

Lieutenant-Colonel S.D. Richards, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major S. Collins, Directorate of Defence Counsel Services
Counsel for Master Corporal West