

Citation: *R. v. Master Corporal S.J. Pearson*, 2008 CM 4015

Docket: 200821

**STANDING COURT MARTIAL
CANADA
QUEBEC
ASTICOU CENTRE, GATINEAU**

Date: 3 October 2008

PRESIDING: LIEUTENANT-COLONEL J-G. PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**MASTER CORPORAL S.J. PEARSON
(Offender)**

SENTENCE

(Rendered orally)

[1] Master Corporal Pearson, having accepted and recorded your plea of guilty to charges number 1, 2 and number 4, the court now finds you guilty of these charges.

[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 these offences. A close friend of yours had become a police agent for the CFNIS Drug Enforcement Team. This agent approached you and requested you sell marihuana to his civilian girlfriend. In fact, this girlfriend was a member of the CFNIS and was acting as an undercover operator for the drug enforcement team. You sold one half of an ounce of marihuana to the police undercover operator on 12 February 2007 and on 16 April 2007. Both transactions occurred at a bar in Ottawa. On 28 May 2007, while you were en route to a third meeting of this nature, you were stopped and arrested by the CFNIS Drug Enforcement Team.

[3] A search warrant for your home was executed. During this search you voluntarily relinquished 34.6 grams of marihuana and 36.7 grams of cannabis resin. You fully cooperated with the CFNIS during this search.

[4] Both transactions were initiated by the police agent. In the time period before the first and second offence, you were also asked to provide marihuana to the undercover operator on two other occasions, but did not do so. On both occasions you sold the marihuana at a price that is well below the normal price of the equivalent quantity of marihuana that could be bought on the streets of Ottawa. You did this as a favour for a friend. I will come back to this issue of friendship later in my decision. You were described as a social trafficker.

[5] Ex-Corporal Prince, a police agent, was released from the Canadian Forces in December 2006. You had become friends with him when you were posted from 2003 to 2006 to the Joint Nuclear Biological Chemical Defence Company, now renamed the Canadian Joint Incident Response Unit.

[6] The principles of sentencing which are common to both courts martial and civilian criminal trials in Canada have been expressed in various ways. Generally, they are founded on the need to protect the public and the public, of course, includes the Canadian Forces. The primary principles are the principles of deterrence, that includes specific deterrence in the sense of the deterrent effect on you personally, as well as general deterrence; that is, deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct and, last, but not least, the principle of reformation and rehabilitation of the offender.

[7] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[8] The court has also considered the guidance set out in section 718 to 718.2 of the *Criminal Code of Canada*. Those purposes are to denounce unlawful conduct to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, provide reparations for harm done to victims or to the community, and to promote a sense of responsibility in offenders and acknowledgement of harm done to victims and to the community. I have also taken into consideration the sentencing guidance provided at section 10 of the *Controlled Drugs and Substances Act*.

[9] The court is also required in imposing a sentence to follow the direction set out in article 112.48 of QR&Os which obliges it, in determining a sentence, to take into account any indirect consequences of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[10] The court has also given consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. The court must impose a sentence that should be the minimum necessary sentence to maintain discipline.

[11] The Court Martial Appeal Court decision in *R. v. Paquette*, 1998 CMAJ No. 8, 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. The prosecution and your defence counsel have jointly proposed a sentence of imprisonment for a period of 60 days. They have recommended that this punishment of imprisonment be suspended. They have also indicated that a fine in the amount of \$1,000 would be appropriate, but they have suggested that a voluntary contribution to the National Capital Region Military Family Resource Centre on your part for the sum of \$1,000 in lieu of this fine would be appropriate. I have been provided with documentation that indicates that you have made this contribution to the National Capital Region Military Family Resource Centre.

[7] The court must also remember that the ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[8] The Supreme Court of Canada touched on the concept of discipline within the Armed Forces at paragraph 60 of its 1992 seminal decision of *R. v. Généreux*, [1992] 1 S.C.R. 259. The court stated that:

The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. The safety and well-being of Canadians depends considerably on the willingness and the readiness of a force of men and women to defend against threats to the nation's security. To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. As a result, the military has its own code of Service Discipline to allow it to meet its particular disciplinary needs. In addition, special service tribunals, rather than the ordinary courts, have been given jurisdiction to punish breaches of the Code of Service Discipline. Recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. There is thus a need for separate tribunals to enforce special disciplinary standards in the military....

[9] The Court Martial Appeal Court in its decision in *R. v. Dominie*, 2002 CMAC 8, echos this passage from the *Généreux* decision when it states, at paragraph 5:

Trafficking in crack cocaine on numerous occasions, even though it is non-commercial in nature, generally requires the imposition of actual imprisonment even [to] civilian offenders. In respect of military offenders, general deterrence requires that the military know that they will be imprisoned if they deal in crack cocaine on military bases. Suspended sentence simply is not available, except in the rare case of extremely mitigating circumstances. This is not one of those rare cases.

Although this Court Martial Appeal Court decision dealt with the trafficking of crack cocaine, the trafficking of any drug cannot be tolerated in the Canadian Forces. The sentences imposed on such offenders must reflect this.

[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:

The trafficking in illegal drugs is a serious breach of the Code of Service Discipline. It is also a serious offence under the *Controlled Drugs and Substances Act*. In the case at hand, the quantity sold makes it an indictable offence, and a guilty verdict renders one liable to imprisonment for five years. It is clear from this sentencing scheme that Parliament views the trafficking of marihuana as a serious offence and wishes to punish offenders accordingly and deter individuals from committing such offences.

Chapter 20 of the *Queen's Regulations and Orders for the Canadian Forces* provides us with the Canadian Forces Drug Control Program. Every member of the Canadian Forces is well aware of this policy and of the consequences of breaching this policy. The use of illegal drugs cannot be tolerated in the Canadian Forces. Even worse, trafficking in such drugs attacks the core values of our military society. Earlier, I quoted a passage from the Supreme Court of Canada pertaining to discipline and the role of the Canadian Forces. We perform a fundamental role in Canadian society. We are allowed to use violence to defend our country and to accomplish the tasks given to us by our democratically elected government. With such power and duty also come great responsibilities and obligations. The men and women who are ordered to place themselves in dangerous situations in Canada and abroad must be of sound mind and of sound body. We are trained to perform our duties and are expected to execute those duties to the best of our abilities. We must also trust our comrades-in-arms to be up to the task to ensure mission success and the security of our troops. The use of drugs and the trafficking of drugs are a direct threat to the operational efficiency of our Forces and a threat to the security of our personnel and our equipment. Therefore, offences for which you have pled guilty are objectively very serious offences in the military community.

You have the benefit of approximately 15 years in the Canadian Forces and you were fully cognizant of the strict policy on drugs.

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

You are a first-time offender. You have pled guilty to the three charges. You indicated at the earliest opportunity that you wished to plead guilty and you instructed your lawyer not to seek any procedure that would delay these proceedings or even have offered you an opportunity to possibly have some of those charges stayed. You cooperated fully with the military police on the day of your arrest. These actions clearly demonstrate that you are willing to take full responsibility for your actions. Your pleas of guilty have saved the prosecution much effort since it appears that a key witness, the police agent, is now in Pakistan. The prosecutor indicated that it would have called close to 20 witnesses if this matter had proceeded to trial.

The small quantity of marihuana that was trafficked, the quantity found at your home and the specific circumstances of the offences of trafficking must also be considered in mitigation. Although what you did is trafficking in marihuana, you did not do it for any monetary gain and you only did it so you could help out a friend who was asking you for some drugs. While you must take responsibility for your actions, the evidence does not reveal that you were an active trafficker of drugs.

The offences did not occur on a military establishment and you were under the impression that you were selling these small amounts to the civilian girlfriend of a civilian friend.

You are in the process of being released from the Canadian Forces. You might be released under item 2(a) or under item 5(f), that decision has not yet been taken by the competent authorities. As mentioned in numerous other courts martial, this fact is to be taken into account when considering the principle of general deterrence.

It appears to me that you made two serious errors in judgement. Firstly, you chose to ignore the clearly and strongly stated CF policy on the use of drugs as well as the dire consequences that can come from the use of drugs while serving in the Canadian Forces. The consequences of trafficking in drugs are also well known within the military community.

Your second grave mistake was associating with a person like ex-Corporal Prince. That individual appears to personalize perfectly the old saying "there is no honour among thieves." I am not stating that you are like ex-Corporal Prince, I am saying that your choice of friends within the drug culture was a factor that created the situation you are now facing.

You left a civilian career that appeared to be quite successful to re-enrol in the Canadian Forces because you liked the life of a soldier. You accepted a

lower income to return to the camaraderie that we cherish so much in the military. You made the mistake of finding a friend who lived a lie.

[12] Having reviewed the evidence presented by both counsel, I have come to the conclusion that you have made some very serious errors in judgement that most probably do not reflect who you truly are.

[13] Your personnel evaluation reports are excellent and describe a soldier who had a brilliant career ahead of him. Your performance since your arrest has not diminished. The personnel evaluation reports also describe the type of soldier this organization needs at this time of high operational tempo.

[14] Unfortunately for you, it appears that you will not be allowed to continue to serve. Such a decision in the present case will be made by the appropriate authorities with the recommendations of your chain of command. I have reviewed DAOD 5019-3 and the memorandum of your commanding officer to DMCARM 5-4. Although I did not read anything in that DAOD that indicates that a release from the Canadian Forces is an automatic consequence of having trafficked in drugs, it would appear that this policy does exist. I note that your CO "unfortunately" recommends your release under item 5(f). Although great deference must be given to the chain of command in such matters, and that they do not fall within the domain of this court, one hopes that administrative release decisions are made with the same attention to all the relevant factors and information specific to the case at hand as is the case when a court martial sentences an offender to dismissal from Her Majesty's service.

[15] I have also thoroughly reviewed the jurisprudence presented to me by both counsel.

[16] Master Corporal Pearson, you have demonstrated to me that you take full responsibility for your actions. I agree with the joint submission of counsel on sentence.

[17] I agree with the prosecution that the sentence must reflect primarily the principle of general deterrence. But, having taken into account the specific circumstances of the offences and of the offender, I conclude that the mitigating circumstances of this case warrant the suspension of a sentence of imprisonment.

[18] I sentence you to imprisonment for a period of 60 days. The carrying into effect of the punishment of imprisonment is suspended.

[19] I would also have imposed a fine in the amount of \$1,000, but will not do so since I have been provided with the necessary documentation demonstrating that you have made a contribution of \$1,000 to the National Capital Region Military Family Resource

Centre. I do believe this contribution will serve a much better purpose than the fine would have while achieving the same sentencing objective.

[20] You have lost your career in the Canadian Forces, learn from these mistakes and move ahead with your life.

Lieutenant-Colonel J-G. Perron, M.J.

Counsel:

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