

Citation: *R. v. Private K. Manion & ex-Private N. Gratton*, 2004CM17

Docket: S200417

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE PETAWAWA**

Date: 14 September 2004

PRESIDING: COLONEL K.S. CARTER, M.J.

HER MAJESTY THE QUEEN

v.

**PRIVATE K. MANION & EX PRIVATE N. GRATTON
(Accused)**

SENTENCE

(Rendered verbally)

[1] The court is required to impose an appropriate sentence upon each of you for the offence to which you've pled guilty and for which you have been convicted.

[2] In doing so, the court is mindful of the fact that sentencing is an individualized process. That is, it is not simply the nature of the offence which is important, but the respective roles of the offenders in the commission of that offence, their previous characters and the direct and indirect consequences of the sentence upon each of them as set out in Queen's Regulations and Orders 112.48.

[3] The court, in determining an appropriate sentence has considered the Statement of Circumstances and the documentary evidence presented to the court and filed as exhibits, as well as the submissions of the counsel. The court has also considered the general principles of sentencing, the nature of the offence and the mitigating and aggravating factors disclosed in the evidence that it has heard.

[4] A sentence must be proportionate to the offence and the degree of responsibility of the offender, which requires consideration of the circumstances that it was committed in and the consequences of its commission.

[5] In that regard, the court would stress that the consequences of the commission of an offence in a military context may involve not only the impact on individuals, but also the impact on the operations of the Canadian Forces and on unit morale and cohesion.

[6] In this case, the offence was committed during a Canadian Forces deployment in a high risk area against another member of the deployed unit. There was, however, no evidence presented on any particular adverse impact on either the operational deployment itself or on unit morale and cohesion flowing from this incident. Although the court can and will consider the circumstances that the offence was committed in, the court cannot draw any specific conclusions in the absence of evidence. Although trust and mutual respect between unit members and up and down the chain of command are vital to operational success, in the circumstances where no evidence is presented the only inference with regard to consequence that the court can draw is that an offence of this nature would not be a positive thing in an operation.

[7] The court must determine which principle or combination of principles of sentencing, when applied, will achieve the goal, which is: protection of the public; reestablishment of respect for law; and in the case of courts martial, as has been mentioned by the prosecution and concurred in by your counsel, the reestablishment of discipline.

[8] This is a situation where the two of you have been convicted of one charge of assault on a sleeping tent-mate. The evidence discloses the assault, while coordinated, was relatively brief and that it involved jumping on the victim, wrestling with him and pushing him to the ground. Fortunately, the victim suffered only transitory injuries involving discomfort and some scrapes.

[9] All the counsel in their submissions suggested a fine was an appropriate form of punishment, though they had different views on the most appropriate amount. In the case of the prosecution, it was suggested that a fine in the range of \$1000 to \$2000 for each offender was appropriate. Lieutenant-Commander McMunagle suggested that in the case of you, Private Manion, a fine in the amount of \$1000 would be an appropriate deterrent. In the case of ex-Private Gratton, Major Turner submitted that a fine of \$1000 or less would be appropriate as a reflection of his degree of participation in this matter.

[10] The court has considered the principles of sentencing and these are usually expressed as: punishment; deterrence, both general and specific and general deterrence is, in essence, that principle of sentencing that is devoted towards deterring other people who are in similar circumstances from committing these kind of offences; specific deterrence is directed towards the offender and the idea is, through the punishment, to convince the

offender that they should not offend again, not only to commit this offence, but to commit any offence again; finally, but perhaps most importantly, where it's possible, reform and rehabilitation are an aim of sentencing.

[11] And they are aims of sentencing because, as with society generally, within the Canadian Forces, the only way we avoid offences is by people not committing them. If an individual can be reformed and rehabilitated, they will cease to commit offences. Now, while this ultimately might be considered a bad thing for judges and lawyers, it's considered a pretty good thing for the Canadian Forces and society. So if the court is convinced that reformation and rehabilitation are possible, then that's an important principle that the court will apply.

[12] The court has to consider aggravating factors and it will briefly outline what it considers the aggravating factors for each of you. First of all for both of you, this was an unprovoked attack on a victim and it was done in a coordinated fashion. It wasn't one of you on the victim and one of you on another victim, it was both of you against one victim. Secondly, as the court has said it can take into account in terms of circumstances the fact that you were on a high risk deployment and you were doing this against a section mate.

[13] In terms of yourself, Private Manion, you played a greater role in the attack, on the facts the court has before it and it considers that aggravating.

[14] In your case, ex-Private Gratton, you have a conduct sheet, however, the court has considered that one of those offences occurred sometime after this incident and only shortly before your release, and so, in essence, it has really considered that you have one entry that it will consider on your conduct sheet. There are no offences of violence, but the fact of a conduct sheet is evidence of a lack of discipline on your part.

[15] The court accepts in terms of mitigating factors that there are a number that are applicable here and both your counsel have mentioned them. In relation to both of you, there is a guilty plea and that is seen as an acceptance of responsibility; that is, that you understand that what you did is wrong. It is very easy to try and blame other people for the things that you do, even the victim for provoking things, but in your case both of you have accepted that what you did was wrong.

[16] In your case, Private Manion, your counsel has emphasized your youth and the fact that this is a first offence for you.

[17] In your case, ex-Private Gratton, it is your lesser involvement in the incident which your counsel has brought to the court's attention.

[18] The court has looked at your previous characters, as it's required to do. And it will say it considers both of you young and both of you had less than three years in when this

occurred. In your case, Private Manion, the first thing the court would say and it would also say this for ex-Private Gratton, is that it considers and takes into account as a positive thing, that you were serving overseas in a high risk deployment.

[19] The court has reviewed all your PDRs it has received, Private Manion, and it indicates that from them the conclusion is that you are a good soldier with high potential, not perfect. The PDRs are very useful in saying areas to improve, not only strengths and while I quite understand that your counsel will read out the strengths to me, I do read all of the PDRs. But what I would say is that even in the areas where you need to build, the only thing that seems to be consistently mentioned is a problem with complying with dress regulations which occurs over several of your PDRs.

[20] It is, however, very clear that, as far as your superiors are concerned, you have grasped the essential requirements of being a member of the Canadian Forces, which isn't only technical, but is the fact that you need to put the interests of the Canadian Forces before your own interests. In particular, I've been impressed by the repetitive nature of references to your initiative, the fact that you're a team player and that you can also work independently. And I have considered very carefully the reference on the last page of Exhibit 11 because that relates to the same time frame in which this incident occurred.

[21] Ex-Private Gratton, again, as I've indicated, I've considered the fact that you have served overseas in a high risk deployment. I know less about you because I have no PDRs. It seems clear from the submissions and from the documents I've received that you had some difficulties and you have not been re-enrolled in the Canadian Forces, at the same time the court accepts you have a plan for a new life outside the Canadian Forces and if that can be facilitated by an appropriate sentence, then this would be beneficial not only to you but to society generally.

[22] The court has also considered your respective financial situations. The court has heard from your counsel, Private Manion, that your major expense appears to be your motorbike and the court has not taken notice of the fact that the motorbike season is tending toward the end in September and that perhaps your expenses might be slightly reduced in the winter. In the case of yourself, ex-Private Gratton, the court accepts you're somewhat stretched for funds at the present time, but that you expect to get some money back from the Canadian Forces in terms of return of contributions.

[23] The court has considered the appropriate principles and it accepts that general deterrence is quite important here. That is, the Canadian Forces has to be satisfied that other people in this situation are not going to engage in this conduct for whatever reason. In regard to specific deterrence, the court considers that a lesser principle and it would just mention that it seems unfortunate that this has taken such a long time to come before the court. The incident occurred on the 25th of November 2003. The court has no knowledge of what happened between then and the 20th of May 2004 when a charge sheet was signed

by the prosecutor. The court not having knowledge could not say how complex a matter this was, all it can do is reiterate that certainly, from the point of view of the military judiciary, if an incident occurs on deployment and the unit is still on deployment, then the office of the Chief Military Judge will make every effort to have a military judge deploy and hear a case in situ as it would seem that would be desirable both from the point of view of discipline in the Canadian Forces generally and also from the point of view of the individuals involved: both offenders, witnesses and others who need to get the matter resolved quickly.

[24] This particular case—clearly this matter would not have arrived in the office of the Chief Military Judge at any point in time before the 20th of May and the documents that I've received indicate that your respective deployments were long over at that point in time. But I raise this matter because it is an important one and it does contribute both to discipline generally and to specific deterrence.

[25] The court has considered reform and rehabilitation and gives much weight to those two principles and that is why it has been convinced that there's no requirement for a prohibition order, a weapons prohibition order or a DNA order. Those are both things that would have very long term and adverse effects on both of you. In relation to a pardon, if the sentence is a fine of \$2000 or less, then you can apply for a pardon after three years and one of the counsel has already referred to the DAOD, so I will assume both your counsel have talked to you about DAOD and a pardon. What I will say is the three years, as I understand it, begins running once your sentence is complete, so the more quickly you pay off a fine, the more quickly you can start on the road towards getting a pardon. A pardon also requires you not to become an offender again during that time frame, otherwise you're back to the beginning. So if you are both serious about this, then once you've finished paying any fine or completing any other sentence that is imposed upon you, you can work on your reform and rehabilitation and hopefully this will not have a long term effect on you.

[26] So I'm now going to ask you to stand Private Manion. Private Manion, the court finds you more responsible in this incident than ex-Private Gratton. The court accepts that, for the most part, this is something where general deterrence can be met and you can understand the consequences of your actions by the imposition of a monetary fine. But the court also thinks that it would be useful to impose another sentence upon you because this is something which is really a breach of an essential military requirement; that is, that you get on with the people you work with, that they can trust you, that you trust and respect them. If you don't then you have to work out a way of resolving matters. So the court is going to impose upon you, as your counsel requested and suggested was appropriate and which is at the bottom end of what the prosecution has recommended, a \$1000 fine, but the court is also going to impose a sentence of 10 days confinement to barracks. So the sentence that you're going to be serving is a \$1000 fine and 10 days confinement to barracks. The court will give you six months to pay, but that does not mean that you can not pay it off more quickly, it simply means you will have six months to pay.

[27] Let me ask you, Lieutenant-Commander McMunagle, the court can make that order to come off the pay of Private Manion and it would suggest it did that beginning with the mid-October pay, my experience is the pay people can't really react more quickly than that.

[28] DEFENCE COUNSEL FOR PRIVATE MANION: That would be appropriate given his circumstances, Your Honour, yes, thank you.

[29] MILITARY JUDGE: In that case, the court will make the order that this will come off your pay on six equal monthly payments beginning in the mid-October pay. However, if for any reason you are released from the Canadian Forces, the balance that is owing at that time will be due the day before your release. Be seated.

[30] Ex-Private Gratton, the court accepts that you played a lesser role in this based on the facts, but the court also has to take into account the fact that you do have a conduct sheet. The court therefore sentences you to a \$1000 fine. Now, the indication is that you have monies due in owing to you from the Canadian Forces, and so the court would direct the prosecution to inform National Defence Headquarters pay authorities today of this order. Whether that is done as part of a general distribution of a message or via phone call or email, the court is not concerned, but it should go out immediately so that they are aware of the order. What the court will do is indicate that it will order the money recovered from that money due in owing, if that is possible. Even with three years in the Canadian Forces you may know that sometimes the bureaucracy takes a rather winding path. So the court is going to say, in case something's already happened and in your case the cheque really is in the mail, that the full amount is due in owing as of the 30th of September of this year. So if it is something where the authorities cannot offset this fine against the monies due in owing you have an obligation to ensure that a cheque is received by the 30th of September 2004 by the Canadian Forces. That should give sufficient time for you to be able to confirm whether the money has been recovered. I would simply point out to you that until the sentence has been completed, ie: the money has been paid, you can't go and seek the pardon. So if there is any temptation to try and ignore this, okay, if you truly have plans to go on and become a paramedic, that may be adversely affected. Please be seated.

[31] The proceedings of this court martial in respect of Private Manion and ex-Private Gratton are now terminated. Mr Officer of the Court, would you march out Private Manion and ex-Private Gratton.

COLONEL K.S. CARTER, M.J.

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