Citation: *R. v. Ex-Private J. Chiasson,* 2008 CM 4002

Docket: 200753

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN

Date: 4 March 2008

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

HER MAJESTY THE QUEEN
v.
EX-PRIVATE J. CHIASSON
(Offender)

SENTENCE
(Rendered orally)

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[1] Ex-Private Chiasson, stand up. Ex-Private Chiasson, having accepted and recorded your plea of guilty to charge one, the court now finds you guilty of this charge. More specifically, you have pled guilty to a charge of possessing child pornography. You may sit down.

[2] The principles of sentencing, which are common to both courts martial and civilian 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 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.

[3] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors. The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. These sections denounce unlawful conduct, they deter the offender and other persons from committing offences, they aim at separating the offender from society where necessary, they aim at assisting and rehabilitating offenders, to provide reparations for harm done to victims or to the community, and to promote a sense of

responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[4] The court is also required, in imposing a sentence, to follow the directions set out in article 112.48 of the Queen's Regulations and Orders, 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.

[5] 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 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. The Court Martial Appeal Court decision in *R. v. Captain Paquette*, (1998) C.M.A.C. 418, 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.

[6] The prosecution and your defence counsel have jointly proposed a sentence of imprisonment for 14 days. The prosecution and your defence counsel have presented five cases to support their position. 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.

[7] You shared a room at building A149 with another private. You also shared an Internet connection with that person. On 10 September 2006, your roommate inadvertently opened a shared file on his computer that was not his, but was yours. He discovered child pornography on that shared file. Your roommate reported this incident to his superiors. A search warrant was issued for your room and was executed by a member of the Canadian Forces National Investigative Service on 14 September 2006. Your personal portable computer, as well as 17 DVDs and two CDs were seized. An analysis of these items was conducted by the Canadian Forces National Investigative Service Integrated Technological Crime Unit.

[8] This analysis revealed one image containing child pornography, and 40 video titles that suggested child pornography. These 40 video files were created between 20 June 2006 and 11 September 2006. Only 14 of these 40 videos were recovered, the other 26 were either overwritten by the Windows operating system, or were corrupted or incomplete. The 14 recovered videos depict both pre-pubescent and post-pubescent males and females performing fellatio, engaging in penetration, mutual and self-masturbation, and other acts of a sexual nature. At least two videos show what appears to be a male engaged in sexual contact, but not intercourse, with children.

[9] You were interviewed by the Canadian Forces National Investigative Service on 6 February 2007. You admitted that you had actively sought child pornography on the Internet. You acknowledged that you were aroused by images of child pornography. You indicated that you knew your actions were illegal and that you were ashamed of your actions.

[10] I will first deal with the evidence in mitigation of sentence. Your early plea of guilty is considered a tangible demonstration of your remorse for your actions. You cooperated fully and immediately during the police investigation of this offence. Canadian jurisprudence generally considers an early guilty plea and cooperation with the police as tangible signs that the offender feels remorse for his or her actions, and that he or she takes responsibility for his or her illegal actions and the harm done as a consequence of these actions. Therefore, such cooperation with the police and an early guilty plea 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 Crown prove, beyond a reasonable doubt, the charges 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 a judicial proceeding. It is also interpreted to mean that the accused wants to take responsibility for his or her unlawful actions.

[11] To your credit, Master Warrant Officer Izzard has described you as an average soldier. Master Corporal Cobb has described you as a good troop, and he would work with you in the future if he had the opportunity to do so. Master Corporal Cobb stated that you have always performed well, that your dress and deportment were never a problem, and that you always displayed a good attitude, even after you were charged. You are a first-time offender and were 25 years old at the time of the offence. You appear to have accepted that you have a problem, and it also appears that you are making attempts at dealing with your sexual dysfunction.

[12] I will now address the aggravating factors of this case. Possession of child pornography is a serious offence of the *Criminal Code of Canada*, both counsel agree on that issue. It is a hybrid offence. This means that civilian prosecutors may choose to prosecute it as an indictable offence, and a guilty verdict renders one liable to imprisonment for a maximum period of five years, with a minimum sentence of 45 days of imprisonment, or they may choose to proceed summarily where the maximum sentence is 18 months' imprisonment with a minimum sentence of 14 days' imprisonment. Few provisions of the *Criminal Code of Canada* contain minimum sentences. It is clear from the sentencing scheme that Parliament views the possession of child pornography as a serious offence and wishes to punish offenders accordingly, and wishes to deter individuals from committing this offence.

[13] The videos did contain explicit sexual activities involving both pre-pubescent and post-pubescent males and females. You did access this type of pornography over a period of some three months. Although you did access this child pornography while you were residing in military quarters, you did not use a Canadian Forces computer.

[14] Ex-Private Chiasson, stand up. I hope that you truly understand that you must deal with your problem. Child pornography is a most insidious and contemptuous crime. Its victims are children who deserve the full protection of society. As stated by the Supreme Court of Canada in *R. v. Sharpe*, [2001] 1 S.C.R. 45, at paragraph 28, and I quote:

> ... [P]ossession of child pornography contributes to the market for child pornography, a market which in turn drives production involving the exploitation of children. Possession of child pornography may facilitate the seduction and grooming of victims and may break down inhibitions or incite potential offences....

[15] Your mother has testified before this court, you have the support of your family. I strongly encourage you to continue to be deserving of this support by focusing all your efforts at defeating your attraction to child pornography. The consequences of a failure, or even worse of a deliberate decision to pursue such illegal activities, will only result in catastrophic consequences to you, your family, and the victims of such vile activities. Only you can make these decisions. The right one will permit you to lead a fruitful life, the wrong one will lead you to despair.

[16] I have carefully reviewed the case law presented by both counsel. These cases have been useful in determining the appropriate sentence in this case. The court believes this sentence must focus primarily on general deterrence and denunciation. Considering the facts of this case, the mitigating and aggravating circumstances of this case, and the need for parity in sentencing offenders who commit similar offences in similar circumstances, and keeping in mind the direction given by the Court Martial Appeal Court in *R. v. Paquette,* I concur with the joint submission that the minimum necessary sentence to maintain discipline in this specific case is a sentence of imprisonment for 14 days. Ex-Private Chiasson, I sentence you to imprisonment for 14 days. You may sit down.

[17] The sentence was passed at 1534 hours, on 4 March 2008. Pursuant to section 196.14 of the *National Defence Act*, I shall make an order authorizing the taking of DNA samples of the offender.

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

COUNSEL

Captain T.D. Bussey, Regional Military Prosecutions Western
Counsel for Her Majesty the Queen
Major L. D'Urbanno, Directorate of Defence Counsel Services
Counsel for Ex-Private J. Chiasson