



COURT MARTIAL

Citation: *R v Dryngiewicz*, 2012 CM 1016

Date: 20121030

Docket: 201228

Standing Court Martial

Mewata Armoury
Calgary, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal Z.A. Dryngiewicz, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Corporal Dryngiewicz has admitted his guilt to one count under section 129 of the *National Defence Act* and one count of absence without leave under section 90 of the *National Defence Act*.

[2] The circumstances of this case reveal that in October of 2011, Corporal Dryngiewicz was at the Infantry School at Canadian Forces Base Gagetown, and a Corporal Ayotte was employed at the same school. On 27 October, Corporal Ayotte was outside Building D-24 of Canadian Forces Base Gagetown smoking a cigarette. This is where Corporal Dryngiewicz came outside and started talking about a timing given to him by a Master Corporal Daniel. The offender indicated that he would not meet that timing and then proceeded to call Master Corporal Daniel a "nigger" and say that he wasn't going to listen to a "nigger" and that as far as he was concerned Master Corporal Daniel "should be hanged from a tree." Corporal Ayotte later informed Master Corporal Daniel about these remarks that were made by Corporal Dryngiewicz. Master Corporal

Daniel felt hurt that Corporal Dryngiewicz had used the word "nigger" in relation to him. On the same day, 27 October 2011, the offender sent a text message to Master Corporal Daniel where he apologized about the "raceist thing." On 28 October 2011, at 0505 hours, Corporal Dryngiewicz had not arrived at the time designated to leave for a tasking and had not sent a text message to Corporal Robichaud indicating that he would be late. Corporal Robichaud went to look for Corporal Dryngiewicz in his barrack room and saw him in bed and he nudged his shoulder to wake him up. Corporal Dryngiewicz woke up and indicated that he would not be going to work and that he didn't care if he got in trouble. Corporal Robichaud left Corporal Dryngiewicz's room and informed Master Corporal Daniel of what had just occurred. Corporal Dryngiewicz did not attend Building A-48 as he was required to do; he arrived only at work at 0930 hours. He was absent from his place of duty for four hours and fifteen minutes. As a result, the other members of his work party completed the tasking without him.

[3] Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that Corporal Dryngiewicz be sentenced to a reprimand and a fine in the amount of \$800, payable at a rate of \$100 per month, beginning on 1 December 2012. Although this court is not bound by the joint recommendation, it can only reject it if the recommendation is contrary to the public interest and the sentence would bring the administration of justice into disrepute. It is not so. I've been provided with ample details, the appropriate range of sentence and proper and valid principles and recommendations. But I will reiterate that in the context of sentencing an offender under the Code of Service Discipline, the court martial should guide itself with the appropriate sentencing purposes, principles, and objectives, including those enunciated in the *Criminal Code*.

[4] As stated before, the fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline and thus so by imposing punishments that meet one or more of the following objectives: the protection of the public and it includes the Canadian Forces; the denunciation of the unlawful conduct; the deterrent effect of the punishment, not only on the offender, but also on others who might be tempted to commit similar offences; and, finally, the reformation and rehabilitation of the offender.

[5] The sentence must take also account for the following principles: the sentence must be commensurate with the gravity of the offence; the previous character of the offender and his or her degree of responsibility; the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; finally, the sentence should or will be increased or reduced taking into account any relevant aggravating or mitigating circumstances that relate to the offender and the offence.

[6] A court will always act with restraint in determining sentence and imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline. Offences of this nature are aimed to protect and preserve the core values of military discipline. The punishments imposed must emphasize the objective of gen-

eral and specific deterrence as well denunciation of the conduct. In the case at bar, it must also be tailored to meet the objectives of reformation and rehabilitation of the offender.

[7] Racist comments corrode the morale and internal cohesion of a unit. It affects the foundation of esprit de corps and it is totally incompatible with the military ethos and effective military service. This type of behaviour cannot be tolerated nor condoned.

[8] The aggravating factors in this case are the following:

- (a) The objective seriousness of the offence under section 129 of the *National Defence Act*. This offence is punishable by dismissal with disgrace from Her Majesty's service. It is a very serious offence objectively, where the offence of absence without leave is punishable under section 90 of the *National Defence Act* is punishable by imprisonment for less than two years or to less punishment; and
- (b) Second, the subjective seriousness of the offences as described in the Statement of Circumstances. I agree with the prosecution that it seems that the absence without leave was triggered to some extent by the refusal of Corporal Dryngiewicz to report to duty at a specific time based on a racial or ethnic motive. It may not have been the only reason why he did not show up to work at his place of duty, but it seems that based on those facts that a racial connotation may have been in play. This is highly prejudicial to good order and discipline;

[9] However, there are significant mitigating circumstances in this case and they were highlighted by the prosecution. Of course, in this particular case the defence made very short submissions basically because I did not really need to hear from them. This joint submission is certainly one of the most complete and sensible recommendation that we've had in months, so counsel have to be praised for that. So with regard to those mitigating circumstances, I note that:

- (a) Corporal Dryngiewicz has accepted full responsibility for his conduct by pleaded guilty before the court and that he had informed the prosecution through his counsel of his intent to do so fairly early in the process. So he has pleaded guilty to the first and third charge;
- (b) Second, the offender had apologized to the victim of his comments the day he had made the inappropriate comments and he has expressed his remorse today during his testimony. Corporal Dryngiewicz knew that he was wrong and he didn't try to avoid the consequences of his misbehaviour;
- (c) Third, Corporal Dryngiewicz has no prior criminal or disciplinary record and he is a very young adult; he was 20 years old at the time of the of-

fences. The court believes that his conduct was attributable in part to his lack of maturity and poor judgment. I'm confident that he will learn from this unfortunate experience in a positive way; and

- (d) Finally, Corporal Dryngiewicz will start new employment in the oil industry tomorrow. His current financial situation is precarious at the very least. He now shares an apartment with a friend, but he lived in a Salvation Army shelter before last month. His personal debts are approximately \$5,000, so in the context, they are very important.

[10] The court agrees with counsel that the proposed sentence is the minimal sentence in the circumstances and it is not so off the mark that its adoption by the court martial would be contrary to the public interest or bring the administration of military justice into disrepute. The proposed sentence is not only sufficient to meet the objectives sought, namely general deterrence, specific deterrence, denunciation, and reformation and rehabilitation, but it clearly addresses those concerns. So, again, counsel were very helpful in making this recommendation and the thinking that went behind that recommendation is commendable.

FOR THESE REASONS, THE COURT:

[11] **FINDS** you guilty of the first charge under section 129 of the *National Defence Act* and guilty of the third charge under section 90 of the *National Defence Act*. The court confirms that the court has directed a stay of proceedings on the second charge.

[12] **SENTENCES** you to a reprimand and a fine in the amount of \$800, payable in eight equal monthly instalments of \$100, starting on 1 December 2012, by certified cheque to the Receiver General of Canada, to the attention of: Canadian Forces Legal Advisor/Claims, at 305 Rideau Street, Ottawa, Ontario K1A 0K2.

Counsel:

Major P. Rawal, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major C.E. Thomas, Directorate of Defence Counsel Services
Co-counsel for Corporal Z.A. Dryngiewicz

Lieutenant(N) M.E. Kwasniewska, Canadian Forces Legal Advisor,
Co-counsel for Corporal Z.A. Dryngiewicz