COURT MARTIAL

Citation: *R v Grenier*, 2013 CM 4014

Date: 20130627
Docket: 201350

Standing Court Martial

Canadian Forces Base Petawawa
Ontario, Canada

Between:

Her Majesty the Queen

- and -

Gunner J.D.M. Grenier, Offender

Before: Lieutenant-Colonel J-G Perron, MJ

REASONS FOR SENTENCE

(Orally)

[1] Gunner Grenier, having accepted and recorded your plea of guilty to charges No. 3, 11, 13, 15, 16, 20, 22, and 23, the court now finds you guilty of those charges. Charges No. 11, 13, 15, 16 and 20, absences without leave, were laid under section 90 of the *National Defence Act*. Charge # 3, desertion, was laid under section 88 of the *National Defence Act* but you have pled guilty to the lesser but included offence of absence without leave. Charges 22 and 23, failing to comply with a condition of an undertaking, were laid under section 101.1 of the *National Defence Act*. The court must now determine a just and appropriate sentence in this case.

[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. On 27 November 2012, at 0930 hours, Gunner Grenier was absent without authority from building Z-120 and was found at his residence by members of his unit at 1040 hours that day. On 13 February 2013, Gunner Grenier was not present for physical training at 0730 hours within the 2nd Battalion Royal Canadian Horse Artillery (2 RCHA) unit lines. At approximately 0915 hours,

Gunner Grenier phoned in to report that he had slept in. Initially, he was ordered to stay at home but was later ordered to report to the unit. Gunner Grenier reported at the unit at around 0945 hours and was sent to work on the second floor of building P-115. Approximately one hour later he was arrested by the military police for having been absent without leave from physical training earlier that day. He was detained by the military police and released by the custody review officer at the end of the day on the following conditions: remain under military authority and report at 0720 hours and 1610 hours to the Regimental Duty Sergeant.

[3] At 1300 hours on 20 February 2013 and at 1100 hours on 26 February 2013, Gunner Grenier did not report for his hour-long appointments at the Care Delivery Unit 2 at CFB Petawawa. On Tuesday 23 April 2013, Gunner Grenier did not report for duties at 2 RCHA unit lines. That same day, the Commanding Officer of 2 RCHA issued a warrant for the arrest of Gunner Grenier. At 0730 hours on 24 April 2013, Gunner Grenier surrendered himself to the Petawawa military police where he was arrested. The custody review officer did not release Gunner Grenier.

[4] On 29 April 2013, a custody review hearing was held. The military judge released Gunner Grenier under conditions, including reporting in person Monday to Friday at 0720 hours and at 1610 hours to the 2 RCHA Regimental Duty Centre except for authorized leave or other periods authorized by or on behalf of the Commanding Officer 2 RCHA.

[5] On Friday 3 May 2013, Gunner Grenier did not report at 1610 hours to the 2 RCHA Regimental Duty Centre, contrary to a condition of an undertaking given on 29 April. On 3 May 2013, the Commanding Officer 2 RCHA issued a warrant for the arrest of Gunner Grenier. On Monday 6 May 2013, at around 0720 hours, Gunner Grenier reported to the 2 RCHA Regimental Duty Centre where he was arrested. He was charged the same day with one count under section 101.1 of the *National Defence Act* for failing to comply with a condition and one count under section 90 of the *National Defence Act* for AWOL. The custody review officer did not release Gunner Grenier.

[6] On 7 May 2013, a custody review hearing was held. The military judge released Gunner Grenier under conditions, including reporting in person Monday to Friday at 0720 hours and 1610 hours to the 2 RCHA Regimental Duty Centre except for authorized leave or other periods authorized by or on behalf of the Commanding Officer 2 RCHA.

[7] On 16 May 2013 at approximately 2300 hours, while undergoing a confinement to barracks sentence awarded at a summary trial, Gunner Grenier left the barracks. Master Bombardier Millar, who was on duty at the unit, tried to call Gunner Grenier to know what was going on. Master Bombardier Millar was informed by Gunner Grenier that he was going fishing for the weekend and that he would turn himself in upon his return.

Between Friday 17 May 2013 and 10 June 2013, Gunner Grenier failed to report in person to the Regimental Duty Centre, contrary to a condition of an undertaking given on 7 May 2013. At no time between 17 May 2013 and 10 June 2013 did Gunner Grenier report to his unit. On 17 May 2013, a warrant for his arrest was signed by the CO of 2 RCHA.

[8] Gunner Grenier was arrested by Captain Smith from 2 RCHA on 11 June 2013 at the Pembroke courthouse after an appearance related to an unrelated charge. On 11 June 2013, Gunner Grenier, having been charged with designated offences under the *National Defence Act*, the custody review officer had no discretion to release Gunner Grenier and Gunner Grenier was kept in custody. During his custody review hearing, Gunner Grenier did not object to his retention in custody and the military judge ordered that Gunner Grenier be kept in custody. Gunner Grenier has been in custody since his arrest on the 11th of June, 2013.

[9] As indicated by the Court Martial Appeal Court, sentencing is a fundamentally subjective and individualized process where the trial judge has had the advantage of having seen and heard all of the witnesses, and it is one of the most difficult tasks confronting a trial judge.

[10] The Court Martial Appeal Court clearly stated that the fundamental purposes and goals of sentencing as found in the *Criminal Code of Canada* apply in the context of the military justice system and a military judge must consider these purposes and goals when determining a sentence. The fundamental purpose of sentencing is to contribute to respect for the law and the protection of society, and this includes the Canadian Forces, by imposing just sanctions that have one or more of the following objectives:

> (a) to denounce unlawful conduct;
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> (b) to deter the offender and other persons from committing offences;
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> (c) to separate offenders from society where necessary;
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> (d) to assist in rehabilitating offenders;
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> (e) to provide reparations for harm done to victims or to the community; and
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> (f) to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[11] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors. The sentencing provisions of the *Criminal Code*, found at sections 718 to 718.2, provide for an individualized sentencing process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender. A sentence must also be similar to other sentences imposed in similar circumstances. The

principle of proportionality is at the heart of any sentencing. Proportionality means a sentence must not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence.

[12] The court must 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. Discipline is one of the fundamental prerequisites to operational efficiency in any armed force.

[13] The prosecution suggests that the following principles of sentencing apply in this case: denunciation, general deterrence, reformation and specific deterrence. The prosecution has provided this court with six cases in support of its submission that the minimum sentence in this matter is a period of imprisonment of 60 days and a severe reprimand. Defence counsel asserts that the time already served as pre-trial custody would represent a just sentence in this case. She also submits that, should the court find that suggestion not adequate, then a sentence of time served and a severe reprimand would be appropriate, and as a third option, she submits that if the time served is not deemed adequate by the court, then a sentence of imprisonment that would be suspended would be just in this case.

[14] Gunner Grenier testified during the sentencing phase of this trial. Although he said he was responsible for the offences for which he pled guilty before this court, his testimony gives the court quite a different impression. He initially answered the prosecutor that he did not remember being offered help by his unit and then said he did when she reminded him of Captain Brunelle's testimony. During his re-examination, he explained that he did not accept the offer of help from his unit because he did not want to be an extra burden on the unit and have fellow soldiers who did not like him have to come and wake him up. He spoke of asking friends from outside his troop to help him wake up in the morning but he did not provide any names or details of these arrangements.

[15] He also compared his absences caused by his difficulty in waking in the morning to a soldier in a knee brace when answering the prosecutor's question pertaining to the effect of absences without leave on his fellow soldiers in his unit. It is not just his medical condition that is at the heart of these offences, but his general attitude. This cannot be compared to a physical disability.

[16] Gunner Grenier testified that he was also trying to help himself yet he could not explain why he missed two medical appointments on 20 and 26 February at the base medical clinic, except to say that he had too much on his mind and he forgot the appointments, but he did attend his 21 February appointment at the sleep clinic. He also missed an appointment with Dr Keays in March and she reports that he did not return telephone calls to rebook the appointment and that she has had no contact with him since 21 February 2013. Gunner Grenier testified that he needs to see Dr Keays by the end of July in order to keep his driving permit. He put great emphasis on the need to get that appointment to keep his driver's permit when he was attempting to explain the

hardships a period of incarceration would cause him, yet he chose not to contact Dr Keays' office since February. Dr Keays did conduct a telephone interview with Gunner Grenier on 18 June to reassess his condition and provide the report presented by defence counsel found at Exhibit 12. It would appear that Gunner Grenier did not discuss this important July medical appointment with her at that time.

[17] He said he was tired of digging a hole deeper when explaining his reason to present himself for a court appearance at the Pembroke courthouse on 11 June knowing that the military police would be there to arrest him. He is quite right that not attending a criminal court appearance would have probably caused him more problems. It definitely was in his best interest to attend that court date even knowing he would be arrested by the military police. Gunner Grenier informed his unit on 16 May that he was going fishing for the weekend and that he would turn himself in upon his return. Gunner Grenier never reported to his unit before he was arrested on 11 June 2013. While he stated that the unit did not provide him with the option of taking daytime naps, he also stated that he does not know whether those naps would have made a difference. He stated that he let himself and his family down. He has put much more emphasis on himself than on his unit and peers throughout his testimony. His testimony has a "me against them" theme.

[18] Defence counsel questioned prosecution witnesses concerning the arrest of Gunner Grenier on 13 February and Gunner Grenier also testified on that subject. It would appear the arrest was made by the military police at the request of the unit but no warrant for his arrest had been signed by the Commanding Officer. Gunner Grenier also testified he felt his request to present medical evidence was not considered by the presiding officer during his summary trial of 15 May for a 19-minute AWOL on 14 May where he was sentenced to a $1000 fine and 12 days of confinement to barracks. The court does not have enough information to come to any conclusion on these subjects and cannot consider them during this sentencing phase.

[19] The court is quite suspicious of Gunner Grenier's testimony. He says that he wanted to deal with his narcolepsy yet he missed three medical appointments, two at the base clinic and one with Dr Keays. He has not returned the sleep clinic's calls since March 2013. He seems more intent on finding excuses for his behaviour than finding solutions. He does not truly accept the consequences of his decisions.

[20] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case.

[21] I consider the following circumstances to be mitigating: You have pled guilty to eight of the twenty-four charges found on the charge sheet. Therefore, a plea of guilty will usually be considered as a mitigating factor. 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 the

judicial proceeding. It is also usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions and the harm done as a consequence of these actions.

[22] You were arrested on 13 February and were detained approximately six hours by the Petawawa military police before you were released by a custody review officer. I will consider this detention to count as one day. You were arrested on 24 April and were detained six days before you were released by a military judge at a custody review hearing. You were arrested again on 6 May and were detained two days before you were released by a military judge at a custody review hearing. You were arrested for the last time on 11 June and have been detained for 16 days. You have served 25 days of detention between 13 February and 27 June 2013.

[23] You testified at great length on the difficult living conditions you experienced while in cells in Petawawa. You testified you did not object to your detention during your last custody review hearing before a military judge because you wanted to do your punishment, but also spoke of your lawyer needing evidence or some other reason in an attempt to explain why you did not try to free yourself of the arduous living conditions you had experienced in cells in Petawawa.

[24] Your counsel has argued that you should be given a 1.5 day credit for each day spent in pre-trial custody. I have reviewed subsections 719(3) and (3.1) as well as subsections 515(9) and 524(4) and (8) of the *Criminal Code*. Each arrest, except for the first arrest on 13 February, occurred after you had been released under conditions by a custody review officer and a military judge the third and fourth time. You have described your living conditions while in cells and they do resemble solitary confinement in that you are allowed out of your cell for approximately one hour per day and that you have practically no contact with anyone except minimal interactions with your guards. You have also testified that you have been requesting to see a dentist because of a toothache for the last week and have not yet been brought to the base dental clinic.

[25] I have already stated that I am quite suspicious of your testimony and your answers during your cross-examination of your living conditions have not diminished this doubt. Also, I have not been presented any evidence demonstrating these conditions are unacceptable when compared with detention at the Canadian Forces Service Prison and Detention Barracks. As such, I will not grant you a credit of 1.5 days for 1 but will grant you a credit of 1 day for each day spent in pre-trial custody.

[26] You did report to your unit following your absence without leave on 13 February, 24 April and 6 May. I do not consider your attendance at the courthouse in Pembroke on 11 June as reporting to your unit. While you had been informed by your military defence lawyer that the military police would be at the courthouse, you attended the courthouse for matters that are not before this court. You did not report to your unit after your fishing trip as you had told Master Bombardier Millar.

[27] Paragraph 2 of article 112.48 of the *Queen's Regulations and Orders* provides that a court shall take into consideration any indirect consequence of the finding or of the sentence. You will be released from the Canadian Forces under item 2(a), unsatisfactory conduct, found at the Table to article 15.01 of the *Queen's Regulations and Orders*, in the near future, likely within a week, according to the Statement of Circumstances. This is an administrative measure that was initiated by your unit based directly on your pre-November 2012 unsatisfactory behaviour and is related in part to some of the charges on the charge sheet before this court martial. As such, it is not an indirect consequence of the finding or the sentence. I will consider it a mitigating factor but will not give it the weight suggested by your defence counsel.

[28] Exhibit 11 is a two-sentence letter dated 21 June 2013 from a roofing company stating that you would have a job with this company as of 2 July 2013 but that this job will not be available should you not be there by 8 July 2013. You have testified that you had worked as a roofer for this company in the past and that you would be hired as a roofer and not just a labourer; thus you would be receiving a much better salary. The court has not been presented any evidence concerning the length of employment, terms of employment or precise salary. It would thus appear that any sentence of incarceration lasting beyond 8 July would preclude you from benefiting from this offer of employment. The court will consider this mitigating factor when determining the just sentence in this case, although the evidence presented does not convince the court that any sentence that would prevent you from obtaining this job by 8 July would be a critical blow to your rehabilitation.

[29] As to the aggravating circumstances, I note the following: Sections 90 and 101.1 of the *National Defence Act* are not objectively as serious as a number of other offences in the *National Defence Act* since one can be sentenced to imprisonment for less than two years or to lesser punishment in the scale of punishments. However, these offences are subjectively very serious offences. You basically decided to do as you wanted. While I am willing to accept that your medical condition, the narcolepsy, can be a factor in your difficulty in waking up in the morning, your general attitude in attempting to deal with this issue is not impressive. You can find all the reasons in the world for not accepting the help offered by your unit yet you cannot provide this court with tangible and realistic measures that you would have put in place to alleviate your problems. As such, your medical condition cannot be considered a mitigating factor for any of the charges except for charge No. 13.

[30] You chose to join the Canadian Forces and you know the importance we attach to timeliness and following orders. Lieutenant Colonel Ivey, Captain Brunelle and Warrant Officer Power testified on the importance of trust within a combat arms unit. Soldiers must be able to trust at all times their fellow soldiers and their superiors. This is a fundamental condition for survival on the battlefield and for the success of the mission. This trust is created by training and the daily behaviour of each member of the unit.

[31] Warrant Officer Power testified that your behaviour had a corrosive effect on the morale of the battery and that some soldiers refused to work with you. The battery is also small and has numerous tasks. The efforts that had to be dedicated to you added to the strain on the other members of the battery. He stressed how trust was critical to gunners that had to rely on each other in a six-member OP section. He also testified that the behaviour issues did not appear after the tragic loss of your cousin in late 2011, but became more prominent after that event. The reasons for your administrative release and his testimony tell the court that your difficulties with military life do not stem solely from that tragic loss and the effects of your narcolepsy.

[32] You were absent without leave from your unit four times: charges No. 11, 13, 20 and 23, and you missed two medical appointments at the base medical clinic during an eight-month period from November 2012 to June 2013. You were absent for a total period of approximately 25 days: 24 days at charge No. 3; one day at charge No. 20; and less than two hours for each of the other absence without leave charges before this court. Your explanations for these absences clearly demonstrate you did not really care for your fellow soldiers or for your unit.

[33] You have a conduct sheet that contains five charges: four of absence without leave and one of conduct to the prejudice of good order and discipline. Two of those summary trials occurred in February and October 2012 and you were tried twice for absences without leave in February and May 2013. You truly do not understand the concept of discipline.

[34] You were 26 at the time of the offences and had been a soldier for three years. You knew that this type of behaviour is not tolerated in the Canadian Forces. You were old enough and had enough experience to know better.

[35] Lieutenant-Colonel Ivey was your commanding officer at the time of the offences. He testified that he did not consider you a typical soldier and that the great majority of soldiers in his unit do not act like you. His testimony indicates that general deterrence would not necessarily be a primary sentencing principle in this case. You were arrested four times and were released three times on the giving of an undertaking to comply with certain conditions. A person's liberty is highly protected by Canadian law. This is demonstrated by the fact that the onus is mainly on the prosecution to prove why a person should be detained before that person is found guilty of an offence.

[36] Canadian law also emphasizes this fundamental concept by instructing trial judges to consider every possible sentence before incarceration is deemed an appropriate sentence. You gave your word to the custody review officer and to the military judges to abide by the conditions and you broke your word every time. Your actions speak louder than words. You were given the benefit of the doubt twice by military judges at custody review hearings and the opportunity to remain free, but you chose to abuse that trust and the underlying fundamental principle of law. You made a mockery of our military justice system and the court must impose a sentence that will clearly de-

nounce your lack of respect for the rule of law, since it is the respect for the rule of law that is one of the fundamental cornerstones of our society and of military discipline.

[37] I have reviewed the cases presented by both counsel. I consider the facts of this case to be more serious than those found in those cases. Also, most of the sentences were the result of a joint submission by the prosecutor and defence counsel. The law concerning joint submissions on sentencing following a guilty plea based on an agreement between the accused and the prosecutor requires a sentencing judge to follow that joint submission unless the facts clearly demonstrate that the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[38] You made choices and now you have to assume the responsibility for those choices. I have concluded that denunciation and general deterrence are the main sentencing principles that need to be applied in the present case. The court must impose the minimum sentence that will provide a clear message to you and to others that this type of conduct is unacceptable and that it is not the conduct we will accept on the part of a soldier. The sentence will assist you in taking responsibility for your offences and will hopefully assist you in your rehabilitation.

FOR THESE REASONS, THE COURT:

[39] **SENTENCES** Gunner Grenier to a period of imprisonment for 60 days and a severe reprimand.

[40] **CREDITS** Gunner Grenier with the 25 days he has already served in pre-trial custody. Gunner Grenier must serve a sentence of 35 days of imprisonment.

Counsel:

Major S. Collins, Directorate of Defence Counsel Services
Counsel for Gunner Grenier

Major A.-C. Samson, Canadian Forces Prosecution Services
Counsel for Her Majesty the Queen