



COURT MARTIAL

Citation: *R v Chu*, 2012 CM 1017

Date: 20121106

Docket: 211262

Standing Court Martial

4050 4th Avenue West
Vancouver, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal Chu, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Chu has admitted his guilt to one count under section 129 of the *National Defence Act*. The circumstances surrounding the offence reveal that on 1 October 2011, he was participating in a unit field training exercise at a range in Chilliwack, British Columbia. As he was preparing to deliver training to some members of his unit, he asked Sergeant Gray, the unit regimental quartermaster sergeant, for a dummy M67 grenade in order to conduct that training.

[2] His superior provided him with three dummy grenades; however, Sergeant Gray was concerned that they could be lost so he directed the offender not to throw the grenades and reminded him that the unit was throwing grenades the next day. About twenty minutes later, Sergeant Gray saw Master Corporal Chu and approximately four other members of the unit searching an area around where Master Corporal Chu was teaching his class.

[3] The superior was informed that they were searching for a dummy grenade that had been lost during the first of four dummy grenade throwing sessions conducted by Master Corporal Chu. Master Corporal Chu and his students threw the dummy grenades during these sessions, contrary to the direction given. He conducted the training sessions in such a way because he had the firm belief that such training was required and the need to throw the dummy grenades during that was, according to Master Corporal Chu, a requirement for the proper instructional requirements.

[4] At the end of the day's training, around 1500 hours in the afternoon, Master Corporal Chu returned two of the dummy grenades that had been provided to him. The following day, at the end of the unit's training exercise, all the available unit members were engaged in searching for the lost dummy grenade before they returned to their unit lines. After approximately 15 minutes of search, the dummy grenade was found. Of course, that caused dissatisfaction with regard to the members of the unit. There's no doubt that Master Corporal Chu's failure to comply with the directions given to him by Sergeant Gray seriously undermined his authority with regard to Master Chu's subordinates.

[5] In the context of this case, counsel for the prosecution and defence have made a joint submission on sentence. They recommended this court sentence him to a fine in the amount of \$150. Although the court is not bound by the joint recommendation made by counsel, it can only be rejected if it is contrary to the public interest or if the sentence would bring the administration of justice into disrepute; and it is not so in this case.

[6] 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 sections 718.1 and 718.2 of the *Criminal Code*. We should always keep in mind that the fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that will meet one or more of the following objectives:

- (a) firstly, the protection of the public including the Canadian Forces;
- (b) secondly, the denunciation of the unlawful conduct;
- (c) third, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and
- (d) finally, the reformation and rehabilitation of the offender.

[7] The sentence must also take into consideration the following principles:

- (a) it should be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;

- (b) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstance; and
- (c) finally, the sentence will be increased or reduced taking into account the relevant aggravating or mitigating circumstances related to the offence or to the offender.

[8] The court will always act with restraint in determining the sentence to be imposed and, as a result, the punishment imposed must always be the minimum necessary intervention to maintain discipline. Offences under section 129 of the *Act* are aimed to protect and preserve the core values of military discipline. I agree with counsel that the punishment imposed must emphasise the general and specific deterrence. In a military organization junior leaders must act in a way that will not undermine the legitimate authority of their superiors.

[9] The aggravating circumstances of this case are the following:

- (a) first, the objective seriousness of the offence under section 129 of the *National Defence Act*. It is punishable by dismissal with disgrace from Her Majesty's service and thus it is a serious offence; and
- (b) second, the subjective seriousness of the offence as described in the statement of circumstances. Instructions by the chain of command must be followed at all times. If one has concerns as to a specific direction, it is fair to express those concerns to a superior, but it is unacceptable to disregard it, even more so when subordinates know about that specific direction.

[10] However, the mitigating circumstances in this case are compelling:

- (a) first, Master Corporal Chu has accepted full responsibility for his conduct by pleading guilty before this court and informing the prosecution that he intended to do so at the earliest opportunity. This is the most significant mitigating factor in this case;
- (b) secondly, Master Corporal Chu is a very valuable asset within his unit and the Canadian Forces. His record of service is eloquent, despite his relatively short period as a medical assistant. In recent years, he has received the Queen Elizabeth Diamond Jubilee medal and a unit commendation award; and
- (c) third, Master Corporal Chu has no prior criminal record or disciplinary record and is a very young adult. At 30 years old, he is a young junior leader.

[11] According to his record, he is completing a programme in Bio-chemistry at Simon Fraser University and his counsel informs the court that he intends to pursue a career in the field of law enforcement, forensics, and that's commendable. As stated by counsel, Master Corporal Chu honestly felt that the throwing of these dummy grenades were beneficial for the training of his subordinates. Rather than voicing his concerns to his superior, he disregarded his specific direction not to do so. His concerns may have been sound, but that's not the point. His initiative was absolutely inappropriate and undermined the authority of his immediate superior and the chain of command and that's why this case, these elements are so aggravating in the circumstances of this case. However, as I said, his plea of guilty is his own recognition that on that day he lacked judgement, which appears to be out of character.

[12] I agree with the prosecution that the decision in *R v Finstad*, 2009 CM 3007, is a valuable precedent in considering the joint recommendation made by counsel to impose a fine in the amount of \$150 as the minimum sentence in these circumstances. It fits well into the range of sentences imposed in cases that sit at the lower end of the spectrum for this type of offence.

[13] The proposed sentence is sufficient to meet the objectives sought, namely general deterrence and specific deterrence. I will also add that it will certainly not exclude any possibility for rehabilitation in this particular case because the amount of the fine would make it such that the consequence of the conviction would disappear after a relatively short period of time.

FOR THESE REASONS, THE COURT:

[14] **FINDS** you guilty of the first charge under section 129 of the *National Defence Act*.

[15] **SENTENCES** you to a fine in the amount of \$150.

Counsel:

Lieutenant-Commander S. Torani, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major J.L.P.L. Boutin, Directorate of Defence Counsel Services
Counsel for Master Corporal N.L.W. Chu