



COURT MARTIAL

Citation: *R v Comerford*, 2013 CM 4009

Date: 20130513

Docket: 201301

Standing Court Martial

Canadian Forces Station St. John's
St. John's, Newfoundland, Canada

Between:

Her Majesty the Queen

- and -

ex-Warrant Officer G.M. Comerford, Offender

Before: Lieutenant-Colonel J-G Perron, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Ex-Warrant Officer Comerford, you had been accused of disobeying a lawful command and of conduct to the prejudice to good order and discipline. Having accepted and recorded your plea of guilty to charge number two, the court now finds you guilty of this charge laid under section 129 of the *National Defence Act* and directs that the proceedings on the first charge be stayed. The court must now impose 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 this offence. At the time of the offence, you were a member of the staff of the Primary Leadership Qualification Land course being conducted by 56 Engineering Squadron. Captain Lane was the course officer. Captain Lane ordered a meeting of the course staff, namely Second Lieutenant Quigley, Warrant Officer

Comerford, Sergeant Lamswood, and Sergeant Baldwin. The meeting took place in an office at Canadian Forces Station St. John's.

[3] When the meeting began Captain Lane started outlining the issues that he wished to address. While Captain Lane was doing this, you started speaking loudly at Sergeant Baldwin. Captain Lane told you to wait until he had finished speaking. You continued to speak loudly at Sergeant Baldwin. Captain Lane told you to calm down and wait until he had finished speaking to the group. You stood up and started shouting at the course staff. Captain Lane suggested that you should temporarily leave the room. You continued shouting at the course staff; Captain Lane then told you to leave the room. As you were leaving the office, you told the group that you wouldn't be back, that you were under tremendous stress in your personal life, and that you were the only reason that the course had been kept together. You then departed the office. The meeting was interrupted by your angry outburst, but the meeting did proceed after you had departed the office.

[4] As indicated by the Court Martial Appeal Court sentencing is a fundamentally subjective and individualized process and it is one of the most difficult tasks confronting a trial judge. The Court Martial Appeal Court 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.

[5] 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;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community;
and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[6] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation or a combination of those factors.

[7] The sentencing provisions of the *Criminal Code*, 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.

[8] 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.

[9] The prosecution and your defence counsel have jointly proposed a sentence of a reprimand and a fine in the amount of \$750. The Court Martial Appeal Court has also clearly stated 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.

[10] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I consider the following to be aggravating:

- (a) Section 129 of the *National Defence Act*, prejudice to good order and discipline, is an objectively serious offence since one can be sentenced to dismissal with disgrace from Her Majesty's service or to lesser punishment in the scale of punishments;
- (b) The evidence indicates that you were under a great deal of stress at the time of the offence because your wife was experiencing a difficult pregnancy and she was on bed rest. This evidence still does not explain fully why you would react in the manner you did. Although you did not obey him, your outburst was not directed at Captain Lane. You were a warrant officer with 15 years of experience in the Canadian Forces; the evidence before this court clearly shows you knew better. While I would not characterize this outburst as stunning, it is surely a surprising lack of discipline. I do not know why you were shouting at Sergeant Baldwin and the other NCOs, but you did lose control over yourself when you would not listen to Captain Lane's order to stop; and
- (c) You failed to show your subordinates the proper leadership in respect for discipline. While any undisciplined behaviour that also includes a lack of respect for orders is serious, this aggravating factor would have had much more weight had you showed this lack of discipline within sight or hearing of course candidates or much junior soldiers.

[11] As to the mitigating circumstances, I note the following:

- (a) The Agreed Statement of Facts, Exhibit 7, indicates that you were awarded the Howlett Trophy for Senior NCO of the Year in your battalion in 2007 and 2009, and that you have received the Commanding Officer's Commendation for outstanding work. Exhibits 8 and 9, two character reference letters, and Exhibits 10 and 11, a performance assessment report and a course report, indicate that this type of behaviour is out of character for you. Captain Lane also thought this behaviour was out of the ordinary; and
- (b) You do not have a conduct sheet; therefore, you are a first-time offender and you have pled guilty. 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. The prosecutor has indicated this guilty plea is a sign of remorse.

[12] I have concluded that general deterrence is the main sentencing principle that needs to be applied in the present case, but that rehabilitation must also be considered. Based on the evidence before the court, I do not believe that specific deterrence is a sentencing principle that applies in this case.

[13] Having reviewed the totality of the evidence, the jurisprudence, and the representations made by the prosecutor and your defence counsel, I have thus come to the conclusion that the proposed sentence would not bring the administration of justice into disrepute and that the proposed sentence is in the public interest. Therefore, I agree with the joint submission of the prosecutor and of your defence counsel.

FOR THESE REASONS, THE COURT:

[14] **FINDS** ex-Warrant Officer Comerford guilty of charge number two and directs that the proceedings on the first charge be stayed.

[15] **SENTENCES** ex-Warrant Officer Comerford to a reprimand and a fine in the amount of \$750.

Counsel:

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

Lieutenant-Commander P.D. Desbiens, Directorate of Defence Counsel Services
Counsel for ex-Warrant Officer G.M. Comerford