



COURT MARTIAL

Citation: *R v Hulbert*, 2013 CM 4001

Date: 20130108

Docket: 201259

Standing Court Martial

Canadian Forces Base Wainwright
Denwood, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Sergeant M.T. Hulbert, Offender

Before: Lieutenant-Colonel J-G Perron, MJ

REASONS FOR SENTENCE

(Orally)

[1] Sergeant Hulbert, having accepted and recorded your plea of guilty to charge number 2, 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 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 this offence. At the time of the offence, you were posted to Canadian Forces Health Services Centre, at Canadian Forces Base Wainwright, Alberta.

[3] On 12 April 2012, Petty Officer 1st Class Traverse asked you what you intended to do with the medical supplies located in the library of the 12 Canadian Forces Health Services. Later that same day, Petty Officer 1st Class Traverse confirmed you were waiting for instructions from the Pharmacy Officer, Lieutenant (N) Uhlman, on how to proceed with regard to the medical supplies in the library. Petty Officer 1st Class Trav-

erse then told you that the library must be organized in order to allow access to two filing cabinets.

[4] Lieutenant (N) Uhlman asked you to provide a list of medical supplies that you wanted removed permanently from 12 Canadian Forces Health Services. Lieutenant (N) Uhlman planned to send the medical supplies on that list to other base clinics for use or for training purposes. She asked you twice for this list but you never provided this list to her.

[5] On 19 April 2012, Petty Officer 1st Class Traverse told you that the library must be organized by 25 April so that the two filing cabinets were accessible. On 1 May 2012, Petty Officer 1st Class Traverse went to the library and discovered that the medical supplies were not organized. She sent an email to you and told you to "clean up" the library by the end of the day.

[6] On 1 May 2012, you ordered three corporals and one private to dispose of the medical supplies located in the library. A corporal asked you if you were certain you wanted this done and you confirmed that you wanted the medical supplies discarded. Later that day, the corporal approached Petty Officer 1st Class Traverse and informed her that you had given orders to discard the medical supplies. Petty Officer 1st Class Traverse did not know the order had been already carried out.

[7] On 1 May, Master Warrant Officer Coyle, the Regimental Sergeant Major of 12 Canadian Forces Health Services Centre, opened the dumpster at the rear of the clinic to find orthopaedic ankle braces, air casts, clavicle/shoulder slings and wrist bracelets. Most of the items were in their original packaging. Master Warrant Officer Coyle relayed this information to Petty Officer 1st Class Traverse. She in turn told Master Warrant Officer Coyle about her earlier discussion with the corporal.

[8] Master Warrant Officer Coyle told you he would put together a work party and remove all the medical supplies that were located in the dumpster. By the time the work party went to retrieve the medical supplies, the dumpster was empty.

[9] 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 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;
- (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 acknowledgement of the harm done to victims and to the community.

[10] 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*, 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.

[11] 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.

[12] The prosecution and your defence counsel have jointly proposed a sentence of a reprimand and a fine in the amount of \$500 to be paid in monthly instalments of \$100. The Court Martial Appeal Court has 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.

[13] 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 from Her Majesty's service or to lesser punishment in the scale of punishments;
- (b) I have not been provided with any explanation for this incident and your actions and inaction during that period of time. You are a sergeant with over 25 years in the service; you knew better. A corporal even questioned the order and then spoke to Petty Officer 1st Class Traverse. It would appear a much junior soldier could see that this was wrong, yet you could not. Your failure to comply with the direction provided to you

by Petty Officer 1st Class Traverse became well known amongst the members of your unit.

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

- (a) You do not have a conduct sheet; therefore you are a first time offender;
- (b) You have pled guilty; 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 prosecution 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 those actions. The prosecutor has informed the court that you indicated your intention to plead guilty at the earliest opportunity. The prosecutor has also indicated this early indication of a guilty plea is a real sign of remorse.

[15] Sergeant Hulbert, stand up. I have concluded that general deterrence is the main sentencing principle that needs to be applied in the present case. 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:

[16] **SENTENCES** Sergeant Hulbert to a reprimand and a fine in the amount of \$500. The fine shall be paid in monthly instalments of \$100 starting on the 15th day of February, 2013.

Counsel:

Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Sergeant M.T. Hulbert

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