Reference: *R. v. Private M. Hébert-Painchaud*,2004CM38

Docket:S200438

STANDING COURT MARTIAL
CANADA
COURCELETTE, QUEBEC
VALCARTIER GARRISON
(LAND FORCE QUEBEC AREA TRAINING CENTRE)

Date: 14 September 2004

PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.

HER MAJESTY THE QUEEN
Prosecutor
v.
PRIVATE M. HÉBERT-PAINCHAUD
(Accused)

SENTENCE
(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] Ex-Private Hébert-Painchaud, since the Court has accepted and entered your plea of guilty to the 1st, 2nd, 3rd, 5th and 6th counts, the Court now finds you guilty of the 1st, 2nd, 3nd, 5th and 6th counts.

[2] Counsel here present made a joint submission to the Court concerning the sentence that this Court should impose. Counsel recommended that the Court impose a term of imprisonment for 60 days. The Court has a duty to impose an appropriate sentence and also has the right to reject the joint proposal of counsel. However, there is a long line of authority indicating that only compelling reasons can justify the court in ignoring a joint proposal. Thus, the judge should accept the joint

submission of counsel unless it is found to be inadequate, unreasonable or contrary to public policy or it is found that it would bring the administration of justice into disrepute, for example if it falls outside the range of sentences imposed previously for similar offences. In return, counsel are required to indicate to the judge all the facts that support this joint proposal.

[3] When it is necessary to impose an appropriate sentence on an accused for the mistakes he has made and the offences of which he is guilty, certain principles are observed and these principles may be stated as follows: first, protection of the public here clearly includes the Canadian Forces; second, punishment of the offender; third, the deterrent effect not only for the offender but also for others who might be tempted to commit such offences; fourth, rehabilitation and reform of the offender; and fifth, denunciation of the offender.

[4] The first principle is protection of the public and the Court must determine whether this protection will be provided by a sentence designed to punish, denounce, rehabilitate or deter. How much emphasis will be placed on one or another of these principles clearly depends on the circumstances, which vary from case to case. In some cases, the main concern, or even the sole concern, will be deterring the accused and/or others. Under those circumstances, little or no importance will be placed on the rehabilitation aspect or on reforming the offender. In other cases, the accent will be placed more on rehabilitation than on deterrence. In this case, the Court is of the view that the accent must be placed more on general deterrence and deterrence of the offender in order to ensure protection of the public and the maintenance of discipline, as well as denunciation of the unlawful conduct, especially in the case of trafficking drugs at a defence establishment to his military colleagues. It is accordingly with these principles in mind that the Court must examine the joint proposal submitted by counsel.

[5] Concerning the mitigating factors, the Court considers:

> The fact that you pleaded guilty and have indicated from the outset of the investigation process, by confessing to the military police, that you had used and trafficked in narcotics, as is made clear in the summary of the circumstances. As counsel for the prosecution pointed out, without your co-operation with the police authorities, the prosecution would have been able to prove only the elements of the first count, which related to trafficking a quantity of 3.5 grams of marijuana, since the charges covering your use of narcotics and occasional trafficking in amphetamines to your former colleagues were merely a result of your admissions. Such a plea of guilty very early in the proceedings and the fact that a lengthy trial was avoided in which the prosecution would not have been able to establish elements such as the frequency and duration of your consumption, as well as the duration, frequency and quantity of the trafficking transactions involved in the 2nd count, are, in the judgment of the Court, a true

indication of the sincerity of your plea of guilty. Moreover, it is in light of these circumstances that the Court is considering the joint proposal of counsel.

Second, the Court has considered the lack of a conduct sheet or a criminal record in your case.

Third, the fact that you have lost your employment with the Canadian Forces, that is to say that you have lost your employment with the Canadian Forces for reasons that are directly related to the cases that are before the Court today. Such a consequence is very significant and it must be taken into account in assessing the criteria of denunciation and deterrence that apply in this case.

The Court also notes as a mitigating factor your young age at the time the offences were committed.

Fifth, it notes the fact that you have received, in all probability with success, therapy for your problems relating to the consumption of narcotics. However, although the Court considers this to be a positive step, it is not unaware of the fact that you are not immune to relapses in terms of the consumption of narcotics or other drugs.

Sixth, the Court has considered the time that has elapsed since the offences were committed.

[6] As far as aggravating factors are concerned, the Court considers the following factors to be aggravating:

The nature of the offence and the sentence prescribed by Parliament. For the offence of trafficking in cannabis marijuana and trafficking in amphetamines, namely five years' imprisonment for quantities of less than three kilos in the case of a first offence and 10 years' imprisonment in the case of a second offence. As regards a charge of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*, for consuming drugs contrary to the Canadian Forces policy on the subject, it is punishable by dismissal with disgrace from Her Majesty's service. Those are therefore all offences that are objectively serious.

The Court finds aggravating the fact that you regularly engaged in such trafficking at the very place of your work, namely Valcartier Garrison, and that your customers were work colleagues, even though it appears that this trafficking occurred at the request of your colleagues.

The Court also finds aggravating the fact that you consumed drugs on a daily basis over a long period, namely from October 2002 to June 2003, in the

quarters at the Garrison, when you were well aware of the Canadian Forces policy on drugs. This is particularly significant, because you enlisted at the end of September 2001.

Finally, the Court finds aggravating the fact that the drugs involved were not limited to soft drugs such as marijuana, but included hard drugs such as cocaine as well as such drugs as amphetamines.

[7] In imposing sentence on you today, the Court has carefully taken into account the evidence before it, including the summary of the circumstances that was read by counsel for the prosecution. The Court has also noted the documents introduced in evidence by your counsel and the arguments of counsel.

[8] Consequently, the Court accepts the joint submission of counsel, which it considers to be the minimum sentence in order to ensure the protection of the public and the maintenance of discipline in the circumstances.

[9] This Court sentences you to imprisonment for a period of 60 days.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major M. Trudel, Regional Military Prosecutor, Eastern Region
Counsel for the prosecution
Lieutenant-Colonel J.E.D. Couture, Directorate of Defence Counsel Services
Counsel for Private M. Hébert-Painchaud