Citation: *R. v. Corporal P.S. Blouin*, 2004CM25

Docket: S200425

STANDING COURT MARTIAL
CANADA
QUEBEC
VALCARTIER GARRISON

Date: September 9, 2004

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

HER MAJESTY THE QUEEN
Prosecutor
v.
CORPORAL P.S. BLOUIN
(Accused)

SENTENCE
(Delivered from the bench)

OFFICIAL ENGLISH TRANSLATION

[1] Please remain standing. Corporal Blouin, the Court has accepted and entered a plea of guilty on the second count, and finds you guilty on the second count and directs a stay of proceedings on the first count. Please be seated.

[2] Corporal Blouin, in determining the sentence that it considers to be appropriate and the minimum in the circumstances, the Court has considered the circumstances surrounding the commission of the offences as set out in the summary of circumstances submitted and read by the prosecution, with the exception of the portions that were deleted because they were disputed by the defence. The Court has also had regard to all of the testimony heard at the sentencing hearing, which was given by Master Corporal Roy, Sergeant Laprade, Private Dubuc-Lecomte, Corporal Lavoie, Master Warrant Officer Cantin, and by yourself.

[3] After assessing the evidence as a whole, having regard to your own testimony, the Court is satisfied that the testimony given by Master Corporal Roy, Private Dubuc-Lecomte and Master Warrant Officer Cantin is entirely credible and reliable. Corporal Lavoie's testimony, in the Court's opinion, was vague and imprecise.

In fact, he did not see a lot and he was evasive. Sergeant Laprade's testimony was reliable and credible. However, the Court believes that he minimized his role in the verbal altercation between Corporal Blouin and himself, which concluded with the assault on him by Corporal Blouin. As for the offender, the Court has serious doubts regarding the reliability of his testimony and his credibility on certain aspects of his testimony, in particular when he denied having punched Sergeant Laprade in the face. His testimony was contradicted by the evidence as a whole, and directly on this point by Private Dubuc-Lecomte. The Court considers this point to be proved beyond a reasonable doubt.

[4] The defence objected to the use of the term "violent" to characterize the punch delivered to Sergeant Laprade's face. In its usual sense, the term "violent" means impetuous, acting or speaking without restraint. There is no doubt that the evidence as a whole, but more specifically the testimony given by Sergeant Laprade, Master Corporal Roy and Private Dubuc-Lecomte, confirms the violent nature of the blow delivered by Corporal Blouin.

[5] On the question of the kicks allegedly delivered to Sergeant Laprade when he was lying on the ground, the Court is satisfied beyond a reasonable doubt that Corporal Blouin did strike Sergeant Laprade several times, but in the sense that Corporal Blouin touched Sergeant Laprade several times with his feet, with some degree of roughness with his feet , while he was lying on the ground. However, the Court can make no finding as to the degree of force used in the circumstances.

[6] The Court has also considered the documentary evidence presented to it in sentencing submissions, counsel's argument, the case law submitted by counsel and the principles that are applicable to sentencing.

[7] In imposing an appropriate sentence on an accused for the wrongful acts he has committed and in relation to the offences of which he is guilty, certain principles are followed, which may be stated as follows:

> first, protection of the public, which includes the Canadian Forces;
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> second, punishment and denunciation of the offender;
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> third, deterrence not only of the offender but also of other people who might be tempted to commit similar offences;
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> fourth, rehabilitation and reform of the offender; and
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> fifth, the principles of proportionality, consistency in sentencing and comprehensiveness.

[8] The first principle is protection of the public, and the Court must determine whether that protection will be achieved by a sentence that is designed to punish, rehabilitate or deter. How much stress is to be placed on any of those principles will of course depend on the circumstances, which vary from case to case. In some cases, the primary concern, if not the sole concern, will be deterrence of the accused or others. In those circumstances, little or no weight may be placed on rehabilitation or reform of the offender. In other cases, the emphasis will instead be placed on rehabilitation rather than deterrence.

[9] In this case, the Court is of the view that the emphasis must rather be placed on collective or general deterrence and denunciation of the offender and the offence committed, in order to protect the public and maintain discipline.

[10] The Court is of the opinion that the sentence must also allow for the rehabilitation and reform of the offender. As I said earlier, the sentence that this Court imposes on you, Corporal Blouin, must nonetheless be the minimum sentence needed for the purposes of justice and the maintenance of discipline in the Canadian Forces.

[11] In considering what sentence would be appropriate, the Court has taken the following mitigating and aggravating factors into consideration. I will begin with the factors that mitigate sentence:

> first, the fact that you have pleaded guilty to the second count, striking a superior officer. However, your testimony indicates that you minimize the effect of the way you acted against a superior officer, even though you realize today, having little choice, that you acted badly;
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> second, the Court considers your service and your performance to be a mitigating factor. For several years in the Canadian Forces, as the documentary evidence provided and submitted to the Court by your counsel indicates. As the evaluation and performance reports filed with the Court indicate, you have performed well and you have demonstrated good conduct in recent years. Your potential for promotion is average, however, and your performance has generally ranked you third and last among your colleagues of the same rank in your unit;
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> third, the fact that you were experiencing problems at the time the offence was committed, for several reasons. First, as a result of the tragic events in which you were involved in preventing one of your colleagues from committing suicide while you were deployed in Bosnia. There is no doubt that you were affected by that event and it had a significant impact on you. The Canadian Forces rightly, and undoubtedly at the initiative of your chain of command, awarded you the Chief of Defence Staff

Commendation. You showed remarkable courage and calm under pressure in that situation. Second, the fact that you had slept only a few hours a day for several months because of the episode I have described, but also because of the birth of an infant. The combination of these factors meant that you became more aggressive, impatient and irritable. In fact it was only after this assault that you obtained professional help, right here at Valcartier, at the Operational Trauma and Stress Support Centre. However, the Court does not have sufficient information about the nature of the treatment you are receiving and your medical prognosis, other than the fact that you are meeting with professionals and taking medications you described yourself as anti-depressants;

fourth, the Court finds your social and family situation to be a mitigating factor. You are married and the parent of a very young child;

fifth, the fact that you have, it seems, successfully completed the counselling and probation you were required to complete as a result of these incidents, with the restrictions that such measures involve in terms of a soldier's immediate career, in particular in relation to promotion, assignment and career course. In fact you testified that you were unable to be a candidate for a career course and that you were unable to take part in ROTO 14 in Bosnia as a result of the incidents of October 15, 2003. The Court finds that being unable to serve his or her country is a difficult restriction for a soldier, when it is imposed on you; and

sixth, the Court considers the fact that since these events you have obtained professional help and you are continuing to receive it today to be a mitigating factor. This is an important component of your rehabilitation process, but is also essential to prevent you from reoffending and using violence against anyone who might provoke you.

[12] The Court considers the following factors to be aggravating factors:

first, the nature of the offence and the sentence provided by Parliament. Striking a superior officer or violence to a superior officer is punishable by imprisonment for life. This is not only an extremely serious offence, it is an offence intended to protect the very foundations, and the essential requirements, of a professional and disciplined army in a free and democratic society, including obedience to and respect for the chain of command. The fact that the acts you committed took place on an exercise in plain view of your military colleagues, and the context of insubordination that preceded your assault against Sergeant Laprade. The

> Court would point out that for sentencing purposes it has placed no weight on your conduct sheet.

[13] As the former Chief Justice of the Supreme Court of Canada wrote in *Généreux*, as cited by the prosecution:

> To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

[14] This is the reason why there is an offence such as the one set out in section 84 of the *National Defence Act*. In fact, someone who commits an assault under section 266 of the *Criminal Code* is liable to a maximum term of imprisonment of five years if he or she is prosecuted by indictment. It must be made clear that a soldier who assaults a superior officer is attacking not merely the individual, but the cornerstone of the military institution he or she represents: the chain of command. It is in part for this reason that the offence of violence to a superior officer is as objectively serious as the offence of treason or mutiny, for example.

[15] Accordingly, the nature of the offence or offences, the context and the circumstances surrounding the commission of the offence are the main factors why this Court has found that protection of the public and maintenance of discipline will be better served by a sentence that reflects collective or general deterrence and denunciation.

[16] Having regard to the evidence heard, the Court does not believe that the sentence of this Court needs to place as much weight on specific deterrence. There is no evidence before this Court that this act was anything other than an isolated act, the consequences of which, however, are extremely harmful, not only for the victim but also, and most importantly, for the very foundations of discipline and respect for the chain of command.

[17] Understand, Corporal Blouin, that by striking Sergeant Laprade you attacked the chain of command and violated the absolute respect that a soldier must have for it. The Canadian Forces have a host of ways and methods of resolving disputes, including simply approaching an officer of a higher rank than the officer against whom one feels one has a grievance. The use of violence against the chain of command is absolutely unacceptable.

[18] Prosecution counsel recommended that the Court sentence you to detention for 30 days, and the prosecution also submitted that there was insufficient evidence to support a suspended sentence. In the decision of the Supreme Court of

Canada in *The Queen v. Gladue* 1999, 133 C.C.C. (3d), 385, that Court said that imprisonment should be the penal sanction of last resort. Incarceration in the form of imprisonment is to be used only where no other sanction or combination of sanctions is appropriate to the offence and the offender. The Court is of the opinion that these principles are relevant in the context of military justice, taking into account, nonetheless, the important differences between the rules governing sentencing that apply in a civilian court hearing criminal and penal matters as compared to a military court, whose powers of punishment are set out in the *National Defence Act*. As I said in *The Queen v. Mallette*:

> [TRANSLATION] Just as the civilian criminal justice system has its own unique features, such as the conditional sentence of imprisonment, which is different from other forms of probation but is nonetheless a true custodial sentence, applied according to different terms, and allows the offender to serve his or her custodial sentence in the community, obviously where it is possible to do so, to combine the punitive and corrective objectives, that is, as the Supreme Court said in *The Queen v. Proulx*, cited by the prosecution, we must look only at the military justice system; that system has disciplinary tools such as detention which are intended to rehabilitate military prisoners and reaccustom them to obeying within a military organized around the values and powers that are unique to the members of the Canadian Forces. Like a conditional sentence of imprisonment, detention may have significant effects in terms of denunciation and deterrence, but without stigmatizing military prisoners to the same degree as members of the military who are sentenced to imprisonment. ...

[19] Defence counsel submits to the Court that a custodial sentence is not necessary in the circumstances, and recommends that a reprimand and fine would be sufficient in the circumstances. The defence invites the Court to consider earlier decisions such as *Private Séguin* dated 1991, in which the accused was sentenced by a disciplinary court martial to pay a fine. It must be recalled that at that time sentence was decided by the disciplinary tribunal, and not the judge advocate, and did not give reasons. If we read the circumstances of that case it is apparent to this Court that the sentence imposed on Private Séguin was entirely inadequate and incomprehensible. It is of no assistance to this Court.

[20] The decisions in *Vanson* and *Winkler* and in *Corporal MacMullin* must also be distinguished because of the underlying facts in each case. The facts in all those cases show that the events took place in a social context. In *Vanson* and *Winkler*, Judge Price stated, at page 115, in the second paragraph:

> As for the circumstances of the offence, the assault occurred at a house party in the married quarters of CFB Edmonton. Corporal Vanson and Private Winkler had consumed large amounts of alcohol. There is no evidence before the court that Corporal Vanson and Private Winkler knew Captain Bodnar's identity. Otherwise, the sentence I'm about to impose would be significantly more severe.

[21] In defence of Major Côté, counsel for the defence, he did not know the circumstances surrounding the commission of the offences in *MacMullin*, but as I said this morning, I presided at that court martial. And in my view, that case must also be distinguished from this one. In *MacMullin*, the assault took place when the people were taking part ... after the people had taken part in a golf tournament, when they were not on duty and after they had taken part in a friendly get-together where alcohol had flowed freely. Not only had alcohol flowed freely, but the people had been virtually urged to consume alcohol. Obviously, at that point, most of the people were intoxicated. The people involved in the *MacMullin* case, except for the driver of the minibus who had driven them to where the incident occurred, were all intoxicated. MacMullin's assault on Lieutenant Cahill took place against the background in which MacMullin himself had just been assaulted by another soldier and everything happened in a situation of tremendous confusion and an atmosphere of extreme tension, where there were seven or eight people. That situation is entirely different from the one before us today.

[22] I listened with interest to the comments of defence counsel and the argument he made to persuade this Court that incarceration is not necessary in your case, Corporal Blouin. It must be said that his eloquence and argument have not persuaded this Court that that approach is sound. On the contrary, the Court is persuaded that a period of detention is the minimum sentence in the circumstances, having regard to the nature of the offence of which you have pleaded guilty and the circumstances surrounding the commission of the offence. The Court believes that no other sanction or combination of sanctions would be adequate to protect the public and maintain discipline.

[23] Had it not been for the personal problems you were having at the time the offence was committed, this Court would have sentenced you to detention for 30 days. Considering the fact that you are getting treatment today for the things that directly contributed to the anxiety, impatience and aggressiveness that you were feeling in October 2003, although the Court has no probative evidence as to the extent to which they contributed to the commission of the act, the Court is prepared to give you what it considers to be the minimum sentence to protect the public and maintain discipline in the circumstances, while having a minimum of impact on your therapy.

[24] Corporal Blouin, please rise. Accordingly, the Court sentences you to detention for a period of 10 days. Please be seated.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

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