



COURT MARTIAL

Citation: *R. v. Khadr*, 2014 CM 1025

Date: 20141113

Docket: 201421

Standing Court Martial

Asticou Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal T.M. Khadr, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Corporal Khadr has pleaded guilty to two counts of insubordinate behaviour under section 85 of the *National Defence Act*.

[2] Counsel for the prosecution and defence have made a joint submission on sentence. They recommended that the Court impose the punishment of detention for a period of 15 days and that the carrying into effect of the punishment be suspended. The Court is not bound by this joint proposal, but it cannot reject it unless it is unfit, contrary to public interest or it would bring the administration of military justice into disrepute.

[3] The circumstances surrounding the commission of the offences are found at Exhibit 7:

- (a) At all times material to this case, Corporal Khadr was a member of the Regular Force, Canadian Forces.

- (b) From March to July 2013, Corporal Khadr, an imagery technician, was posted to the Canadian Forces Joint Imagery Centre, Ottawa.
- (c) On 19 July 2013, Corporal Khadr was called into the office of Sergeant Dawson and Master Corporal Turcotte was also present in the office.
- (d) Sergeant Dawson wanted to meet with Corporal Khadr regarding a Divisional Note being given to Corporal Khadr outlining performance areas that needed to be improved. It had been noted that Corporal Khadr had been argumentative with military authorities and had difficulties in accepting criticism.
- (e) During the meeting, Corporal Khadr asked that the date of a specific incident be added to the Divisional Note. Sergeant Dawson said he would amend the Divisional Note to add the date.
- (f) Corporal Khadr became agitated; he told the sergeant, "I'll sign your fucking note." He scribbled on the Divisional Note then threw it on the desk.
- (g) Master Corporal Turcotte intervened by asking Corporal Khadr to calm down. Corporal Khadr replied by saying, "Who the fuck are you to tell me what to do?" and yelling more obscenities. He pushed Master Corporal Turcotte.
- (h) Sergeant Dawson ordered Corporal Khadr out of his office. After more utterings of obscenities, Corporal Khadr complied and left the office.

[4] Counsel provided the Court with relevant facts that are essential to the determination of a fit and proper sentence in this case and those facts are found at Exhibit 8:

- (a) There has been a seven-year gap since Corporal Khadr's last offence. Corporal Khadr has had no disciplinary issues in the interim period.
- (b) In the interim period Corporal Khadr married and started a family; Corporal Khadr is the sole income provider of his spouse and three sons, ages seven, five and two.
- (c) In August 2013, approximately one month after the events before the Court, Major Paul Sedge, a military psychiatrist, diagnosed Corporal Khadr with Schizophrenia, paranoid sub-type.

- (d) As a result of his untreated Schizophrenia, Corporal Khadr's ability to cope with stressful situations was severely impaired at the time of the offence. He was suffering from long-term sleep deprivation in relation to auditory hallucinations and delusions of grandeur, both symptoms of his Schizophrenia. In the months preceding the workplace incident, Corporal Khadr slept very little, two or three hours per night. During the day, he would ruminate constantly on a particular delusion and spend hours researching on the Internet. He struggled to maintain his attachment or perception to reality. Lastly, prior to treatment, his demeanor was irritable, suspicious and volatile.
- (e) Since his diagnosis over a year ago, Corporal Khadr has maintained regular follow-up with the mental health clinic and has been compliant with his treatment plan.
- (f) Corporal Khadr attends Canadian Forces Health Services at the Montfort Hospital every two weeks to receive injections of depot anti-psychotic medication under nursing supervision.
- (g) Corporal Khadr no longer represents a threat for aggression.
- (h) Corporal Khadr does continue to exhibit symptoms of Schizophrenia that have impaired his capacity to recover and limit his career prospects. Schizophrenia is a lifelong, chronic mental illness. Corporal Khadr will likely need to remain on medication for Schizophrenia for the rest of his life. He has been assigned a permanent medical category and it is anticipated that he will be medically released from the Forces.

[5] In sentencing an offender under the Code of Service Discipline, a 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*.

[6] The fundamental purpose of sentencing at a court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, and that includes the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) 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) the reformation and rehabilitation of the offender.

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

- (a) it must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- (b) the sentence must be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- (c) the sentence should or will be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence and also to the offender. However, the Court must act with restraint in determining sentence and imposing such punishments or punishment that constitute the minimum necessary intervention to maintain discipline.

[8] In this case, the sentence must emphasize the objectives of denunciation, specific and general deterrence, and rehabilitation.

[9] This is not the first encounter between military tribunals and Corporal Khadr with regard to insubordinate behaviour. In particular, the offender was found guilty of a similar offence before a Standing Court Martial on 21 September 2007 (2007 CM 2028) and the Court sentenced him to a reprimand, a fine in the amount of \$500, and confinement to barracks for a period of 21 days.

[10] In weighing the applicable sentencing principles, Lamont M.J. highlighted some of the aggravating and mitigating circumstances of the offence and of the offender at paragraphs 9 and 10:

[9] I have, as I said, considered both the aggravating and the mitigating circumstances urged upon me by both counsel in the course of their addresses. With respect to some of the aggravating features, they relate primarily to the circumstances of the offence. The offence created by section 85 of the *National Defence Act* is objectively serious, carrying with it a very high maximum punishment. This is an indication to the Canadian Forces that Parliament intends that offences of this nature be treated seriously. One of the factors involved in the commission of the offence was that it was, apparently, an outburst in the presence of several other members of the offender's unit. In addition, I have considered the conduct sheet of the offender, disclosing, as it does, two previous offences which were dealt with on the very day of the offence for which the offender is to be sentenced. One of those, again, was a charge of behaving with contempt toward a superior.

[10] I have also considered many mitigating circumstances, related primarily to the personal circumstances of the offender. He is age 27 and I consider him, therefore, still young. He is newly married, and his wife is expecting a baby in a matter of weeks. I note that he has successfully completed a period of six months' counselling and probation, which was imposed, in part, in respect of the matter giving rise to this court martial. He has also successfully completed an anger management course, as required by his chain of command, which appears to have been followed immediately after the commission of the offence for which I have found him guilty. I am also told that the offender has extended an apology. The terms of the apology, to whom it was extended, and the timing of the apology have not been clarified before me, but all these circumstances lead me to

conclude that the evidence in this case shows that the offender has, indeed, turned a corner in his young life.

[11] His previous convictions for similar types of offences is the most aggravating factor in this case, whereas the offender's mental health condition, sincere and genuine efforts to follow medical treatment, expected release for medical reasons, and acceptance of guilt are compelling mitigating circumstances. There is no doubt the mental health condition of the offender has played a significant role in the behaviour and conduct of Corporal Khadr in July 2013.

[12] I agree with counsel that the appropriate sentence must include a short-term period of incarceration to achieve the objectives of specific and general deterrence as well as the denunciation of the conduct. In the particular medical circumstances of Corporal Khadr, however, the Court also agrees with counsel that it is not necessary that he ought to serve the imposed punishment.

FOR THESE REASONS, THE COURT:

[13] **FINDS** the offender, Corporal Khadr, guilty of two counts of insubordinate behaviour under section 85 of the *National Defence Act*.

[14] **SENTENCES** the offender, Corporal Khadr, to detention for a period of 15 days and suspends the carrying into effect of that punishment.

Counsel:

Major J.E. Carrier, Canadian Military Prosecution Service, Counsel for Her Majesty the Queen

Major A. Reed, Directorate of Defence Counsel Services, Counsel for Corporal T.M. Khadr