



## COURT MARTIAL

**Citation:** *R.v.Bernard, 2014 CM 2022*

**Date:** 20141114

**Docket:** 201430

General Court Martial

Canadian Forces Base Esquimalt  
British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Leading Seaman P.C.J. Bernard, Offender**

**Before:** Colonel M.R. Gibson, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Leading Seaman Bernard, having accepted and recorded your plea of guilty to the first charge on the charge sheet, the court now finds you guilty of that charge. That charge of an act to the prejudice of good order and discipline, laid under section 129 of the *National Defence Act*, related to lying to a member of the military police as to the cause of a motor vehicle accident in which you were the driver. It is now my duty to determine an appropriate, fair and just sentence.

[2] In doing so, the court has considered the principles of sentencing that apply in the military justice system, the facts of the case as disclosed in the documents and testimony introduced in evidence, as well as the submissions of counsel for the prosecution and the defence.

[3] The fundamental purposes of sentencing by service tribunals in the military justice system, of which courts martial are one type, are: to promote the operational effec-

tiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and to contribute to respect for the law and the maintenance of a just, peaceful and safe society.

[4] The fundamental purposes are achieved by the imposition of just sanctions that have one or more of the following objectives: to promote a habit of obedience to lawful commands and orders; to maintain public trust in the Canadian Forces as a disciplined armed force; to denounce unlawful conduct; to deter offenders and other persons from committing offences; to assist in rehabilitating offenders; to assist in reintegrating offenders into military service; to separate offenders, if necessary, from other officers or non-commissioned members or from society generally; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community.

[5] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[6] Other sentencing principles include: a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances; a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances; a sentence should be the least severe sentence required to maintain discipline, efficiency and morale; and any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[7] In the case before the court today, I must determine if the sentencing purposes and objectives would best be served by deterrence, denunciation, rehabilitation, or a combination of these factors.

[8] The court must impose a sentence that is of the minimum severity necessary to maintain discipline, efficiency and morale. Discipline is that quality that every Canadian Forces member must have that allows him or her to put the interests of Canada and of the Canadian Forces before personal interests. This is necessary because members of the Canadian Forces must promptly and willingly obey lawful orders that may potentially have very significant personal consequences, up to injury or even death. Discipline is described as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training and practice, it is something that must be internalized, as it is one of the fundamental prerequisites to operational effectiveness in any armed force. One of the most important components of discipline in the military context, is self-discipline. This includes the self-discipline required to tell the truth, even in difficult circumstances, where there may be adverse personal consequences. Leading Seaman Bernard, your actions demonstrate that this is an area in which you have been deficient.

[9] The facts of this case are disclosed in the Statement of Circumstances entered into evidence.

- (a) On 21 June 2012, Leading Seaman Bernard was a Canadian Forces Reserve Force Boatswain serving on a Class B engagement with VENTURE, the Naval Officers Training Centre.
- (b) At approximately 2200 hours in the evening of 21 June 2012, Leading Seaman Bernard was present, in uniform, within the Rocky Point Training Area at Canadian Forces Base Esquimalt. Leading Seaman Bernard was driving a Ford F-250 truck rented by the Department of National Defence. Leading Seaman D.W.J. Aguilar was a passenger in the truck. Leading Seaman Bernard had worked beyond regular hours and was more fatigued than usual. Lighting conditions were dark. Leading Seaman Bernard was driving on a gravel road. The posted speed limit, of which Leading Seaman Bernard was aware, was 30 kilometres per hour. While driving at a speed of approximately 50 kilometres per hour, Leading Seaman Bernard misjudged a corner, causing the right rear wheel of the truck to strike a large boulder very close to the road. In excess of \$13,000 damage was caused to the truck.
- (c) Later in the evening of 21 June 2012, Leading Seaman Bernard provided a voluntary verbal statement to Corporal B.S. Crawford, a uniformed member of the military police, in which he stated that the damage to the truck arose when he swerved to avoid a deer, causing the front tire to lose traction and slide off the road. That statement was false and Leading Seaman Bernard knew it to be so.
- (d) On 29 June 2012, following further investigation by the military police, Leading Seaman Bernard made a second voluntary statement, in writing, to Corporal Crawford. In his statement of 29 June 2012 he acknowledged lying to the military police in his statement of 21 June 2012 and stated that he had lost traction because he had taken a corner too wide while travelling at approximately 50 kilometres per hour. There was no deer involved in the accident.

[10] The court considers that the aggravating factors in this case are the following:

- (a) The objective gravity of the offence of which Leading Seaman Bernard has been convicted. The offence of conduct to the prejudice of good order and discipline under section 129 of the *NDA* is punishable by dismissal with disgrace from Her Majesty's Service. However, as aptly pointed out by the prosecutor in his submissions, one must also take into account the context in which the section 129 charge is laid, and the subjective seriousness of the facts of the particular case, as it can embrace a very wide range of conduct, from the relatively minor to quite serious.

- (b) The lack of integrity shown by Leading Seaman Bernard in lying to a member of the military police in the course of an official investigation, and the attempt to evade responsibility for his actions.

[11] The mitigating factors in this case include the following:

- (a) First and foremost, that Leading Seaman Bernard has pleaded guilty to this offence. This is always an important mitigating factor, reflecting that the offender has accepted responsibility for his actions.
- (b) The absence of a conduct sheet or any other indication of prior convictions.
- (c) That following his initial error in judgment in lying to the MP investigator, that Leading Seaman Bernard corrected this in a subsequent statement.
- (d) The positive indication of Leading Seaman Bernard's recent performance and his potential for future service, and the views of Leading Seaman Bernard's chain of command, given by his supervisor, Petty Officer 2nd Class Valentine.
- (e) Finally, the considerable delay in bringing this matter to trial. This is not a factually complex case. The offence occurred on 21 June 2012, and Leading Seaman Bernard admitted to it in his statement of 29 June 2012. Yet, the charge was not laid on the Record of Disciplinary Proceedings until June 2013, and the charge sheet was not signed until many months after that. The prosecutor explained that some seven months of post-charge delay occurred because the charges were sent to the wrong referral authority. This matter is thus being tried today some 29 months after the offence date. This is clearly inconsistent with the duty to act expeditiously set out at section 162 of the *National Defence Act*, which provides that charges laid under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit. In the court's view, this extensive delay should carry considerable weight in mitigation. One of the primary purposes of sentencing in the military justice system is to promote operational effectiveness through the maintenance of discipline, efficiency and morale. One of the reasons why Canada has a separate military justice system is the need for disciplinary matters to be dealt with promptly, in order to effectively maintain discipline. This effectiveness is significantly diminished by extensive and unwarranted delay in bringing matters to trial and extensive delay necessarily exposes an accused person to protracted stress and anxiety while the charges hang over their head pending their resolution.

[12] The principles of sentencing that the court considers should be emphasized in the present case are denunciation, general and specific deterrence, and rehabilitation. Confidence in the honesty, integrity, discipline, maturity and good judgment of members of the Canadian Forces, both by the general public and other Canadian Forces members, is critical to the effectiveness of the Canadian Forces in the fulfilment of their important functions. Members of the Canadian Forces are rightly held to a very high standard. The actions of Leading Seaman Bernard in lying to military police constitute a significant derogation from those standards. He must never repeat these actions, and other members of the Canadian Forces must also understand that such actions are simply not tolerable and be deterred from committing them.

[13] And the court has taken note of the evidence of Petty Officer 2nd Class Valentine that Leading Seaman Bernard's recent performance has been positive, and that his chain of command esteems that he has the potential to provide valuable service in future. Rehabilitation and reintegration into military service are significant factors in this case.

[14] The prosecution and defence have made a joint submission recommending a sentence of a fine of \$500. In the case of a joint submission, as reiterated by the Court Martial Appeal Court in the case of *R. v. Private Chadwick Taylor*, 2008 CMAC 1, the question that the court must ask itself is not whether the proposed sentence is one that the court would have awarded absent the joint submission; rather, the court is required to consider whether there are cogent reasons to depart from the joint submission; that is, whether the proposed sentence is unfit, unreasonable, would bring the administration of justice into disrepute, or be contrary to the public interest.

[15] The prosecutor drew the court's attention, by way of sentencing precedent, to the Standing Court Martial case of *Master Warrant Officer Ferguson* decided in 2011. This was a useful precedent, which shared many similarities with the present case. And, as counsel has pointed out, the punishment of a fine of \$900 in that case was given to an offender with considerably higher rank and greater experience than Leading Seaman Bernard possesses in the present case before the court.

[16] I would also observe that I concur with the submission made by the defence that Leading Seaman Bernard is being sentenced today for the section 129 offence to which he has pleaded guilty, involving lying to a member of the military police during an official investigation, not for the actual accident itself nor the monetary damages caused by it.

[17] The court does not consider that the proposed sentence is unfit, unreasonable, would bring the administration of justice into disrepute, or be contrary to the public interest. Thus, the court will accept the joint submission of counsel for the prosecution and defence as to sentence.

**FOR THESE REASONS, THE COURT:**

[18] **FINDS** you guilty of the first charge on the charge sheet.

[19] **SENTENCES** you to a fine of \$500.

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**Counsel:**

Major J.G. Simpson, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Lieutenant-Colonel D. Berntsen, Directorate of Defence Counsel Services  
Counsel for Leading Seaman Bernard