COURT MARTIAL

Citation: *R. v. Blinn,* 2015 CM 2024

Date: 20150115
Docket: 201446

Standing Court Martial

Canadian Forces Base Shilo
Shilo, Manitoba, Canada

Between:

Her Majesty the Queen

- and -

Ex-Bombardier B.J. Blinn, Offender

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

REASONS FOR SENTENCE

[1] Bombardier Blinn, having accepted and recorded your plea of guilty to the third charge on the charge sheet, the court now finds you guilty of this charge. You have pleaded guilty to the offence of absence without leave, contrary to section 90 of the *National Defence Act*. 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 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 effectiveness 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 show up for work when and where we are required. Bombardier Blinn, 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. At all material times, Bombardier Blinn was a member of the Canadian Forces, Regular Force, posted to A Battery, 1st Regiment, Royal Canadian Horse Artillery, Canadian Forces Base Shilo, Manitoba. On 25 March 2014, the members of A Battery, 1st Regiment Royal Canadian Horse Artillery were required to report for duty at 0730 for physical training which was to be held at the General Strange Hall Sports

Field on Canadian Forces Base Shilo. Bombardier Blinn was aware that he was required to report for duty at 0730 at the General Strange Hall Sports Field. He had not been granted leave for this period nor had he been exempted from the requirement to report for duty at 0730. At 0730 on 25 March 2014, Bombardier Blinn was absent from his place of duty at the General Strange Hall Sports Field and did not report for physical training until 0735, five minutes late. Bombardier Blinn was released from the Canadian Forces on 20 June 2014.

[10] The court considers that the aggravating factors in this case are the following: the entry on the conduct sheet for a conviction at summary trial for another section 90 AWOL offence.

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

(a) First and foremost, that Bombardier Blinn has pleaded guilty to the offence. This is always an important mitigating factor, reflecting that the offender has accepted responsibility for his actions.

(b) Secondly, the objectively minor circumstances of the commission of the offence, involving a five-minute absence without leave.

[12] The principles of sentencing that the court considers should be emphasized in the present case are denunciation, and general and specific deterrence. Confidence in the honesty, integrity, discipline, maturity, reliability 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.

[13] Even though the circumstances of its commission may be relatively minor, the section 90 *National Defence Act* offence goes to the very core of the maintenance of military discipline and operational effectiveness.

[14] In this case, the prosecution and defence have made a joint submission for a sentence comprising a fine of $200. 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] If that were all there were to consider in this case, my decision would be straightforward. However, given what has transpired post-charge, the circumstances of this case require further comment on two subjects.

[16] The first is the conduct of Bombardier Blinn in not coming to court when summonsed. This court martial assembled in Shilo on 12 December 2014. Bombardier Blinn did not appear on that date. The court adjourned until 12 January 2015. Bombardier Blinn again did not appear on that date. This necessitated the issuance by the court of a judicial arrest warrant to compel the appearance of the accused person before the court today.

[17] No explanation has been offered to the court for Bombardier Blinn's absence on these two dates, nor any apology made to the court. Further, substantial public expense has been incurred to have the court assemble on these two dates. The actions of the accused have resulted in the waste of significant amounts of public funds.

[18] I have carefully considered the issue of whether I should cite Bombardier Blinn for contempt, and require him to show cause as to why he should not be found in contempt of this court martial. I have the authority to do so. Section 179(1) of the *National Defence Act* provides:

> A court martial has the same powers, rights and privileges – including the power to punish for contempt- as are vested in a superior court of criminal jurisdiction with respect to
>
> (a) the attendance, swearing and examination of witnesses;
>
> ...
>
> (d) all other matters necessary or proper for the due exercise of its jurisdiction.

[19] I have decided not to do so for three reasons. First, as no explanation has been offered to the court, I am not in possession of all of the facts. Second is the nature of contempt proceedings, and the restraint that courts should demonstrate in invoking this extraordinary power. As the Supreme Court of Canada has indicated in the case of *R. v. Arradi*, [2003] 1 SCR 280, judges should exercise restraint in the use of the contempt power, particularly where the notional contempt has occurred out of the face of the court. Third, Parliament has provided a specific offence at section 118.1 of the *National Defence Act* to address cases where the accused person has failed to appear for his trial. Section 118.1 reads:

> Every person who, being duly summoned or ordered to appear as an accused before a service tribunal, fails, without lawful excuse, the proof of which lies on the person, to appear as summoned or ordered, or to remain in attendance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

[20] In the present case, given that Parliament has specifically addressed this issue through section 118.1, I consider that it would thus be preferable, should the prosecution consider after investigation that the evidence and public interest warrant it, to consider whether it should lay a charge and pursue a prosecution for the section 118.1 offence, rather than addressing this through a contempt proceeding.

[21] But Bombardier Blinn, I want you to very clearly understand two things in this regard. First, you are being sentenced here today only for the section 90 AWOL offence for which you have been convicted. I have exercised judicial restraint and not factored in your conduct in twice failing to appear for trial as an aggravating factor. But second, you need to very clearly understand that you have flirted with danger in doing so, and have through your conduct potentially transformed a minor offence into a much more serious offence involving the administration of justice.

[22] I wish to make one more comment concerning jurisdiction and the reason for holding a trial in a case such as this where the accused person is no longer a member of the Canadian Forces, in order to correct any misapprehensions that may persist. Paragraph 60(2) of the *National Defence Act* provides:

> Every person subject to the Code of Service Discipline under subsection (1) at the time of the alleged commission by the person of a service offence continues to be liable to be charged, dealt with and tried in respect of that offence under the Code of Service Discipline notwithstanding that the person may have, since the commission of that offence, ceased to be a person described in subsection (1).

In other words, the military justice continues to retain jurisdiction over that person, notwithstanding that they may no longer be a person who is a member of the Canadian Forces.

[23] The public policy reason for this goes back to the reasons for sentencing in the military justice system that I alluded to earlier: to promote the operational effectiveness 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. Persons who have committed service offences need to be held accountable for these offences, for reasons of justice and the perception of justice amongst their former colleagues who remain in the Canadian Forces.

[24] Having made these observations, the court does not consider that the proposed sentence is so far off the mark as to be 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:

[25] **FINDS** you guilty of the third charge on the charge sheet.

[26] **SENTENCES** you to a fine of $200.

Counsel:

Lieutenant-Commander S. Leonard and Major R. Rooney, Canadian Military Prosecution Service, Counsel for Her Majesty the Queen

Major S. Collins, Directorate of Defence Counsel Services, Counsel for ex-Bombardier B.J. Blinn