



COURT MARTIAL

Citation: *R. v. Dahmani*, 2014 CM 3027

Date: 20140803

Docket: 201438

Standing Court Martial

Canadian Forces Base Edmonton
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Sapper A. Dahmani, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Sapper Dahmani, having accepted and recorded a plea of guilty in respect of the six charges appearing on the charge sheet, the Court now finds you guilty of all these offences.

[2] The military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Forces. In this regard, the Supreme Court of Canada has recognized the need for distinct courts to address questions of service discipline in the Canadian Forces and to maintain public order with regard to persons who are subject to the Code of Service Discipline.

[3] You must understand that, like any other court in Canada, the Court Martial must consider the minimum sentence that would meet sentencing objectives and must not go beyond what is required in the circumstances.

[4] Here, counsel for the prosecution and your counsel have made a joint submission regarding the sentence that should be imposed on you. They have recommended that I sentence you to imprisonment for a term of 21 days and dismissal from Her Majesty's service. In addition, after some discussions I had with counsel, in the circumstances, they made a joint submission to the effect that the Court should suspend the prison sentence.

[5] Without listing them, it is important to understand that sentencing is based on objectives and certain principles, including those suggested by the prosecution: denunciation, the deterrent effect on the offender, the fact that there are questions of proportionality in relation to the offence and the person committing the offence, the offender's background, and a question of parity in sentencing. The Court will generally look at what sentences were imposed in similar circumstances for similar offences. This does not automatically mean imposing the same sentence; rather, it acts as guide to assist the Court.

[6] Having considered all the objectives and principles, I find that the Court must give special importance to the objectives of denunciation and general deterrence, as well as to the rehabilitation aspect.

[7] Here, the Court is faced or must deal with charges that occurred between February and July 2014 and that essentially consist of being absent without leave and failing to comply with a condition that had been imposed on you to allow you to be released after your arrest.

[8] The general context that was presented to me is that after you enrolled in the Canadian Forces, you performed exceptionally well and that everything was going very well in the unit until you faced more personal problems, namely, your relationship with your wife, which forced you to choose between her and the Armed Forces. You made a personal choice, and that choice had certain consequences that had an emotional impact on you that led you, if I understand correctly, to find a way of managing these emotions. This was the beginning of the end, in a certain sense. This was when you started being absent more often from your work, and this also caused professional problems.

[9] I gather from the way in which the circumstances were described to me, and from the way you commented on these circumstances, that you became addicted to alcohol and drugs to a certain degree, but that you also tried, with the help of your unit, to overcome this addiction. It is clear to me that you are fully aware of this but that you still have a long battle ahead of you in this regard. This ultimately led you to refuse to remain under military authority or to recognize that the Canadian Forces had any authority over what you had to do for a certain period.

[10] I note that there was a progression in the absences without leave, in terms of the duration of the absences. It started with half days or full days and culminated in a 44-day absence and then a 47-day one; the latter two absences are much more serious.

In arriving at a fair and appropriate sentence, the Court has considered the following mitigating and aggravating factors. First, the aggravating factors are the following:

- (a) the objective seriousness of the offences, which are purely service offences, particularly being absent without leave, which in a military context, even though they are less serious in terms of the maximum sentence, constitutes the first step towards disobedience, which goes to the very heart of how the Canadian Armed Forces function. Being absent without leave is somewhat reflective of a lack of concern or respect. It is also an offence that includes aspects of responsibility, such that this is a significant offence in a military context. The offences of which you have been found guilty carry a maximum sentence of imprisonment for a term of less than two years;
- (b) there is also the subjective seriousness of the offences, and here I note five factors. As I have told you, you showed a lack of respect and were irresponsible, such that your supervisors and your unit could no longer count on you, and you acknowledged this in your testimony. You were no longer reliable, which is essential for a member of the Canadian Forces, as you were aware, because in the three years leading up to that moment, you had no trouble following the orders and abiding by values and principles of the Canadian Forces;
- (c) there is also your conduct sheet, which contains a notation regarding an identical offence, an absence without leave that occurred in 2013, which I must take into account as an aggravating factor;
- (d) there is your experience. The fact that you had been in the Canadian Forces for more than three years means that you had time to absorb the values and ethics of the Canadian Forces and were fully aware that by not reporting or by refusing to report for duty, you were going against these values and principles;
- (e) there is also the premeditation, in that what you did was repeated and planned. It was not something that you decided to do spontaneously, saying to yourself, "OK, I'm not reporting." It was done gradually, with the absences becoming longer and longer. Therefore, these are things that you thought out, and in your own testimony regarding the last absence without leave or the release condition, you acknowledged that you were not even sure if you were prepared to comply with all that and remain in the unit; and
- (f) the duration of the absences, too, is a very important factor, there being absences without leave of a few hours or a half day, compared with

absences without leave of more than a month, which are more serious, and I must take this into account too

[11] In terms of mitigating factors, I must obviously note the following:

- (a) the guilty plea, which reflects the fact that you take full responsibility for the offences you committed. You also expressed regret and did not limit yourself to pleading guilty in your testimony; you clearly expressed that you were assuming responsibility for your actions, that your actions did not reflect the training you had been given in the Canadian Forces, and that you regretted the consequences that your actions had on the unit and its members;
- (b) there is also the fact that you had to face the people here, at the Court Martial. In my view, this is an important factor in terms of general deterrence, in that you were brought before the public for offences that you committed, and in that sense, the fact that this was done in front of your peers and your superiors is an important deterrent factor for you and for others committing such offences; and
- (c) there is also your age and your career. It is nonetheless true, from what I gather from the people who testified, that you are a good soldier and a good sapper, and that something changed in your life and caused you to take a different path. But in general, people were satisfied with your performance. There is also your age. You have your whole life ahead of you, so this should allow you to change your ways, as you explained

[12] In the circumstances, I accept counsel's sentencing recommendation and therefore sentence you to imprisonment for a term of 21 days and dismissal from Her Majesty's service, since the submission is not contrary to the public interest and is unlikely to bring the administration of justice into disrepute.

[13] Now, as for the suspension that both parties recommended to me, section 215 of the *National Defence Act* states that the Court may suspend a sentence of imprisonment. No factors are given, and in a number of decisions that I previously rendered, I expressed my opinion on how a military judge should decide whether to suspend a sentence of imprisonment.

[14] Before suspending a sentence of imprisonment or detention, I must determine whether there are exceptional circumstances or operational requirements that would lead me to do so.

[15] In my opinion, as I explained, one important factor is the fact that you waived an immediate custody review hearing before a military judge in order to see this matter settled, and in this sense, you were ready to give up your freedom if the military justice system would give you a Court Martial hearing quickly. You must understand that it

takes some time to set up a Court Martial hearing. There are analyses that have to be done, and the fact that a Court Martial hearing could be held within eight days, that is, from the time you appeared for the first time before me, at the review hearing, until today, is rather quick. And the fact you gave up your freedom to make this happen is an exceptional circumstance that I can take into account.

[16] There is also the fact that for 21 days, you were in pretrial custody, which in terms of days is something impressive enough to justify your not serving the sentence of 21 days' imprisonment.

[17] Also, in your testimony, you clearly established that you had some career plans in the very near term. Dismissal from Her Majesty's service means that you will be released from the Canadian Forces. In such a context, you explicitly stated an intention to return to society and to be a positive asset. You have very clear plans, and you also said that you are aware of the problem that you have developed in terms of drug and alcohol addiction. You have no clear set plans for treatment, but I think that you fully aware of the need for ongoing follow-up with therapists of some sort to avoid falling back into a cycle of addiction such that you would once again go through a rough patch and have your life turned upside down.

[18] Therefore, in light of all these facts, I find that there are exceptional circumstances allowing the Court to suspend the term of imprisonment to which I have sentenced you. I am also of the opinion that, given all the circumstances and the explanations that you gave, this decision will not undermine public confidence in the military justice system and the court martial system.

FOR THESE REASONS, THE COURT

[19] **FINDS** Sapper Dahmani guilty of the six charges appearing in the charge sheet.

[20] **SENTENCES** the offender to imprisonment for a period of 21 days and dismissal from Her Majesty's service.

AND

[21] **SUSPENDS** the carrying into effect of the punishment of imprisonment for a period of 21 days.

Counsel:

Major A.-C. Samson, Canadian Military Prosecution Service, Counsel for Her Majesty the Queen

Lieutenant-Commander P. Desbiens, Defence Counsel Services, Counsel for Sapper Dahmani