



Citation: *R. v. Miller*, 2014 CM 2018

Date: 20141007

Docket: 2013100

Standing Court Martial

Canadian Forces Base Kingston
Ontario, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant-Colonel D.L. Miller, Offender

Before: Colonel M. Gibson, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant-Colonel Miller, having accepted and recorded your plea of guilty to the first, third and fifth charges on the charge sheet, the court now finds you guilty of these charges. 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 evidence heard by the court and 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. 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.

[6] 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.

[7] 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, in large measure, the strength of character to resist engaging in conduct which is wrong or unethical. The actions of Lieutenant-Colonel Miller demonstrate that this is an area in which she has been deficient.

[8] The facts of this case are disclosed in the statement of circumstances entered into evidence. At all times material to this case, Lieutenant-Colonel Miller was a commissioned officer in the Canadian Forces, Regular Force.

[9] On 20 December 2012, for a unit event in Kingston, Ontario, Lieutenant-Colonel Miller wore her DEU tunic with the following medals/ribbons and decorations:

- (a) Officer of the Order of Military Merit (OMM);
- (b) Special Service Medal (SSM) with NATO bar;
- (c) Canadian Peacekeeping Service Medal (CPSM);
- (d) UN Disengagement Observation Force (UNDOF) with the tour numeral two;
- (e) UN Interim Force in Lebanon (UNIFIL);
- (f) Canadian Forces' Decoration (CD) with one clasp/one silver rosette; and,
- (g) three Command Commendations.

[10] She did not have authority to wear the UNIFIL medal, the SSM, or two of the command commendations. The statement of circumstances indicates that she has been wearing the UNIFIL and SSM medals on her uniform since 1997.

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

- (a) the objective gravity of the offences of which Lieutenant-Colonel Miller has been convicted. The offence of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act* is punishable by dismissal with disgrace from Her Majesty's Service or to less punishment;
- (b) the fact that Lieutenant-Colonel Miller is a senior officer with long experience in the Canadian Forces and ought quite simply to have known and acted better and not succumbed to the temptations of vanity or vainglorious display, or sought a borrowed honour of recognition that she had not legitimately earned or been properly authorized to display;
- (c) the fact that Lieutenant-Colonel Miller's conduct sheet discloses that she was convicted by a Standing Court Martial on 22 October 2012 of three offences involving dishonesty: wilfully making a false statement in a document signed by her that was required for official purposes, and two counts of conduct to the prejudice of good order and discipline. All of these convictions relate to her falsely representing that she had passed a CF EXPRES Program test, knowing this representation to be false. She was sentenced by the court to the punishments of a severe reprimand and a fine of \$3,000. I would note that this was on the basis of a joint submission to the court by the same prosecutor and defence counsel as have appeared in the present case; and,

- (d) that Lieutenant-Colonel Miller wore the medals and commendations at issue for a protracted period of time, and, specifically, that she continued to wear these decorations to which she was not entitled after her previous conviction at court martial for an offence of dishonesty on 22 October 2012. The three charges to which she has pleaded guilty specify conduct on 20 December 2012, two months after her previous conviction.

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

- (a) first and foremost, that Lieutenant-Colonel Miller has pleaded guilty to the offences. This is always an important mitigating factor, reflecting that the offender has accepted responsibility for her actions;
- (b) the outstanding performance consistently demonstrated over a number of years by Lieutenant-Colonel Miller in the Performance Evaluation Reports entered into evidence that relate to the years prior to her conviction by a Standing Court Martial in 2012;
- (c) the sheaf of letters of commendation over the years, and support for Lieutenant-Colonel Miller, that were entered into evidence at Exhibit 15. Lieutenant-Colonel Miller has substantial equity in the Service over the 34 years of her career in the Canadian Forces; and,
- (d) the indications in the letter in evidence at Exhibit 15 written in October 2014 by Major-General Tremblay, her current Commander at the Canadian Defence Academy, and in the email written by Colonel Ewing, her current supervisor, that Lieutenant-Colonel Miller has performed strongly in the recent past notwithstanding the pressure of her imminent trial by court martial and that she continues to make a valuable contribution to the Canadian Forces.

[13] 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 and good judgment of senior officers of the Canadian Forces, both by the general public and by other Canadian Forces members, is critical to the effectiveness of the Canadian Forces in the fulfilment of its vitally important functions. Members of the Canadian Forces are rightly held to a very standard. The actions of Lieutenant-Colonel Miller constitute a significant derogation from those standards. She must never repeat these actions, and other members of the CF must also understand that such actions are simply not tolerable and be deterred from committing them.

[14] The regulation at *QR&O* 18.11(1) that Lieutenant-Colonel Miller contravened is quite clear: "No officer or non-commissioned member shall wear an order, decorations, medal or the ribbon representing any of them without authority." Medals and decorations only retain their meaning if there is rigour in the qualification criteria used to

award them, and rigour in ensuring that they are worn only by those who have truly earned them and are entitled to wear them in accordance with the specified authority.

[15] The prosecution and defence have made a joint submission for a sentence comprising a severe reprimand plus a fine of \$5,000. 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.

[16] I was not provided with any cases similar on their facts to the present case as sentencing precedents by either the prosecution or defence. If this were a first offence I would have no difficulty accepting the sentence jointly recommended by the prosecution and defence as appropriate. What creates some difficulty in the present case, however, is that it is not a first offence. The offender, Lieutenant-Colonel Miller, was convicted at court martial of offences of dishonesty shortly before the date of 20 December 2012 to which the charges currently before the court relate. This conviction must have been fresh in her mind on that date. Yet she chose to continue to wear medals and commendation insignia to which she was not entitled.

[17] To some outside the military community this may seem a matter of minor import. It is not. The court notes that "improperly wearing a uniform, rank badges, ribbons or medals to which the accused person was not entitled" is actually cited in Note G to *QR&O* article 103.60 as a paradigm example of an action prejudicial to good order and discipline. But what is truly significant about Lieutenant-Colonel Miller's conduct in this matter, however, is what it says about her integrity as a senior officer. Coming so closely on the heels of her previous convictions for offences of dishonesty, it must raise significant questions about her integrity and judgment.

[18] It is open to question whether in these circumstances the joint submission of the prosecution and defence is sufficiently different in kind from the sentence that was awarded to Lieutenant-Colonel Miller at her previous trial by court martial to respect the step principle of sentencing. They submit that the increased quantum of the fine is sufficient to say that it does. Some doubt attends this. Absent the joint submission, given the record of previous convictions in the period preceding the date specified in the three charges of which Lieutenant-Colonel Miller has now been convicted, the court would have considered the punishment of reduction in rank. However, as I indicated earlier, the jurisprudence provides that this is not the test.

[19] In deciding whether to depart from the joint submission I must have regard to the guidance provided by appellate courts, and in particular the Court Martial Appeal Court. Having done so, 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.

[20] I am also cognizant of the arguments articulated by counsel suggesting the multiple factors that may potentially influence the positions ultimately taken on sentence recommendations by the prosecution and defence in any given case, and for judges to restrain their instincts to look behind the face of submissions made to them by prosecution and defence counsel as officers of the court.

[21] I also am cognizant of the strong mitigation evidence entered on Lieutenant-Colonel Miller's behalf concerning her past and recent performance as an officer in the Canadian Forces. Thus the court will accept the joint submission of counsel for the prosecution and defence as to sentence.

[22] Lieutenant-Colonel Miller, it is the profound hope of the court that you have learned the appropriate lessons from your two appearances at court martial and that there will never be the necessity for a third.

FOR THESE REASONS, THE COURT:

[23] **FINDS** you guilty of the first, third and fifth charges on the charge sheet.

[24] **SENTENCES** you to a severe reprimand and a fine of \$5,000.

Counsel:

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

Major S.L. Collins, Directorate of Defence Counsel Services
Counsel for Lieutenant-Colonel Miller