



COURT MARTIAL

Citation: *R. v. Anderson*, 2024 CM 4008

Date: 20240531

Docket: 202344

Standing Court Martial

Canadian Forces Base Winnipeg
Winnipeg, Manitoba, Canada

Between:

His Majesty the King

- and -

Master Warrant Officer J.A.J. Anderson, Offender

Before: Commander J.B.M. Pelletier, M.J.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] I have accepted and recorded Master Warrant Officer (MWO) Anderson's guilty plea in respect of the one charge he was facing before this court martial under section 130 of the *National Defence Act (NDA)* for possession of a personal Sig Sauer 226 pistol at an unauthorized place contrary to section 93 of the *Criminal Code*.

[2] At the sentencing hearing, counsel jointly recommended that instead of convicting the offender, I direct that he be discharged absolutely and that I impose a weapons prohibition order for a duration of five years under section 147.1 of the *NDA*.

[3] That jointly recommended disposition severely limits my discretion in the resolution of this case. As any other trial judge, I may depart from a joint submission only if the proposed sentence or disposition would bring the administration of justice

into disrepute or is otherwise contrary to the public interest. This high threshold has been set by the Supreme Court of Canada in recognition of the fact that joint submissions of counsel respond to important public interest considerations. The prosecution agrees to recommend a resolution that the accused is prepared to accept in exchange for a guilty plea, avoiding the stress and expense of a trial and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of the guilty plea to begin making amends.

[4] Yet, while joint submissions have the benefits of bringing certainty to participants in the administration of justice, I must also keep in mind the disciplinary purpose of courts martial in performing the sentencing function attributed to me as a military judge. Sentencing is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following either a trial or a guilty plea. It is the only opportunity to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public, and in the presence of members of the offender's unit.

[5] The sentencing hearing at court martial proceedings therefore performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, sentencing military judges must ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered, but also adequately laid out in their sentencing decision to an extent that may not always be necessary in other courts.

[6] The starting point for any sentencing decision is found at section 203.2 of the *NDA*, which provides that the military judge shall impose a sentence commensurate with, "the gravity of the offence and the degree of responsibility of the offender."

[7] Section 203.8 of the *NDA* governs the issue of absolute discharges by courts martial. As it pertains to the criteria to be applied, it reads as follows:

If an accused person pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for 14 years or for life, the court martial before which the accused appears may, if it considers it to be in the accused person's best interests and not contrary to the public interest, instead of convicting the accused person, direct that they be discharged absolutely.

[8] The offence for which MWO Anderson accepted guilt does not prescribe a minimum punishment and is punishable by imprisonment for a term not exceeding five years, hence less than the fourteen years threshold by which an absolute discharge is no longer available. Therefore, the disposition of this case by means of an absolute discharge is available to me here if it meets the following criteria: it is in the offender's best interest, and it is not contrary to the public interest.

[9] Counsel provided the Court with information pertaining to the circumstances of the offence and of the offender to support their joint recommendation. This included a Statement of Circumstances which explains the facts relating to the offence; official documents pertaining to the career of MWO Anderson; and a Statement of Facts produced by defence counsel explaining the circumstances of MWO Anderson, accompanied by documents outlining his various accomplishments in an unblemished career of twenty-one years in the Canadian Armed Forces (CAF).

The circumstances of the offence

[10] As it pertains to the circumstances of the offence, the prosecutor read the Statement of Circumstances, which was formally admitted as accurate by MWO Anderson. The Court first notes that at the time of the offence, in December 2021, MWO Anderson was a warrant officer in the regular force serving in the military police occupation with the Canadian Forces National Counter-Intelligence Unit (CFNCIU) at 1 Canadian Air Division (1 CAD), 17 Wing, Winnipeg.

[11] The Statement of Circumstances reveals the following facts as it pertains to the offence committed on 17 December 2021:

- (a) at that time, MWO Anderson was on leave immediately following his return from a mission overseas. He accepted a request for assistance to help a colleague, a military police (MP) captain, become more familiar with the Sig Sauer firearm in anticipation of qualification in another MP position.
- (b) to provide this help, MWO Anderson decided to bring a personal restricted firearm, a Sig Sauer 226, to the CFNCIU Detachment at 1 CAD, a place he was not authorized to possess the firearm.
- (c) while at the CFNCIU Detachment, MWO Anderson removed the restricted firearm from its locked briefcase and removed the trigger lock. He came out of the office where he was conducting weapons drill with the MP captain to show everyone present the firearm.
- (d) while MWO Anderson possessed the firearm at the CFNCIU Detachment, it was not loaded and was not capable of firing a round as he had, before arriving at 1 CAD, inserted a wooden bolt into the firearm. However, this modification and the absence of ammunition did not change its status as a restricted firearm.
- (e) an MP master corporal, an MP sergeant and a civilian employee witnessed the presence of the firearm at the CFNCIU Detachment. The sergeant notified the CFNCIU chain of command days after the incident.

- (f) although MWO Anderson took efforts to render the firearm inoperable prior to bringing it to the unauthorized location by replacing the barrel with a wooden insert, by demonstrating the firearm to be safe when entering the facility, and by always operating the firearm in a safe and professional manner, it remains that the restricted possession and acquisition licence that he possessed at the time did not authorize transportation to nor possession of the restricted firearm at 1 CAD.
- (g) MWO Anderson later apologized to those who were present when he had his firearm in the office, acknowledging that his conduct could have raised security or mental health concerns.
- (h) at the first opportunity provided in the court martial process, MWO Anderson took responsibility for his conduct and agreed to plead guilty.

The circumstances of the offender

[12] MWO Anderson is a fifty-three-year-old military police senior non-commissioned member who joined the CAF in May 2003, following in the footsteps of his grandfather who was an MP with the Provost Corps during World War II.

[13] Following basic and occupational training, MWO Anderson has since occupied significant positions of increased responsibilities involving several deployments of varied duration overseas and domestically, including in support of operations during the COVID-19 pandemic. Amongst other places, he was deployed to Afghanistan in 2009 and in the Middle East in 2021. Throughout his career, he has been employed with MP units and the CFNCIU in Winnipeg, Cold Lake and Ottawa in addition to supporting special operations forces.

[14] MWO Anderson is married and has two grown sons.

[15] MWO Anderson's current supervisor, the officer commanding the Aircraft Security Officer Flight at National Defence Headquarters, commented very positively on the significant contribution and positive impact of MWO Anderson on his unit, which is tasked to provide armed force protection on Royal Canadian Air Force aircrafts, including to persons such as the Prime Minister of Canada and members of the royal family, often on short notice. He added that he and others at the unit consider the charge which had to be laid against MWO Anderson as the result of an unusual and uncharacteristic action of a very professional soldier who has and continues to display the utmost competency and high proficiency in handling and use of firearms in the execution of his duties.

[16] The statement of facts provided by defence counsel and accompanied by several letters of appreciation and certificates, highlights numerous accomplishments and outstanding performance and potential of MWO Anderson which are too numerous to be detailed here. Suffice it to say that the career profile of MWO Anderson supports his

counsel's assertion to the effect that the incident which generated the charge before the Court is an aberration in an otherwise impeccable and untarnished service record.

[17] Since the incident, MWO Anderson has completed retraining on firearms, including requalifying on the Sig Sauer 226 pistol annual qualifications as well as completing the Restricted Firearms Safety Course, which includes training on transportation of restricted firearms.

[18] MWO Anderson has no criminal or disciplinary record, and a conduct sheet exists under his name simply to list two commendations from Commanders of the Special Operations Force Command and the Canadian Joint Operations Command awarded as a result of exceptional performance in 2016 and 2021 respectively.

[19] It is understood that the incident has been embarrassing for MWO Anderson, who carries himself with pride and, besides this lapse of judgment, can only be described as an exceptional member of the CAF and a major asset to the MP group as a whole.

[20] MWO Anderson is profoundly remorseful for his actions. What started as a genuine intention to help a colleague ultimately resulted in the offending decision to bring his personal firearm to his workplace. MWO Anderson expressed his regret for his lack of judgment at the hearing and his determination to do better in the future, especially as a mentor and leader within the CAF.

The seriousness of the offence

[21] The Court has considered the objective gravity of the offence in this case. The offence in section 93 of the *Criminal Code* attracts a maximum punishment of imprisonment for a term not exceeding five years. It is therefore an objectively serious offence which recognizes the importance of respect for the numerous rules surrounding the use, storage and transport of restricted firearms in this country. Even if many members of the CAF are routinely called upon to be armed domestically in the course of their functions, it certainly does not mean that rules must be considered optional or taken lightly: respect for restrictions related to firearms is part and parcel of professional organizations entrusted with the exceptional authorization to carry arms in our society. Respect for these rules is especially important in the military context, where the use of force must be controlled at all times and in all circumstances, regardless of the stressors involved.

[22] That being said, I agree with counsel that the subjective gravity of the offence in the circumstances of this case is at the very low end of the spectrum. Precautions were taken to ensure the safety of the weapon, and no one was put at risk for their personal safety.

[23] Regardless, as acknowledged by counsel, the unauthorized presence of a restricted firearm in a CAF workplace is problematic in itself. We are here because of

the fact that any lapse in judgment which causes such problematic presence to materialize is worthy of formal sanction, even against a non-commissioned member with an unblemished record such as MWO Anderson.

Purpose of sentencing

[24] Keeping in mind the main purpose of sentencing in section 203.1 of the *NDA*; namely, the maintenance of discipline, efficiency and morale of the CAF, the decision that I make on the disposition of this case must be adequate to denounce the conduct, or more specifically, signal that respect for rules is important. My decision must also deter anyone who may be tempted to disregard such rules.

[25] Yet, my decision can meet the objectives of denunciation and deterrence without being so severe as to cause a disproportionate impact on the offender and risk compromising his necessary rehabilitation.

[26] Indeed, I have before me an offender who is remorseful and rehabilitated professionally, according to his supervisor. The disposition of this case should not impose more restriction than necessary for his continued rehabilitation and the interests of the public in benefiting from his service as a highly performant and highly contributing member of the CAF.

Aggravating and mitigating factors

[27] Once the importance of enforcing respect for the rules applicable to the possession and transport of restricted weapons is acknowledged, as I have done, I am unable to see in the facts relating to this case any aggravating circumstances which goes beyond the minimal circumstances which warrant sanctioning the violation that has occurred.

[28] The fact that a civilian employee saw the weapon in the workplace and the acknowledgement by MWO Anderson that his conduct could have raised security or mental health risks are not sufficiently significant, in my opinion, to constitute aggravating factors given that such risks did not materialize. The need of the sentencing process here is essentially nothing more than to sanction a technical violation constituting a breach of discipline in circumstances where no one was victimized.

[29] The Court acknowledges the following and significant mitigating factors:

- (a) First, MWO Anderson's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking responsibility for his actions in public, in the presence of members of his unit and the broader military community.

- (b) Second, the fact that MWO Anderson has no criminal or disciplinary record and his past conduct and accomplishments, indicating that the offence is an anomaly that is out of character for him.
- (c) Third, the fact that MWO Anderson has collaborated with authorities early on and has been remorseful since expressing his regrets before the Court today.
- (d) Finally, the significant contribution made by MWO Anderson to the CAF in the past and the confidence expressed by his supervisor and his extraordinary potential to make a positive contribution in the CAF in the future. This indicates the need for the disposition of this case to have a minimal impact on an offender who has, for all intents and purposes been rehabilitated as well as a minimal impact on the organization which employs him.

Assessing the joint submission

[30] The exercise of assessing the joint submission of counsel for an absolute discharge is different from assessing a proposed punishment or combination of punishments given that the submission that is made to me is grounded on the unique circumstances of this case. I agree with counsel, therefore that there is no point in analyzing precedents to ensure respect for the principle of parity.

[31] There is no range of punishments at play for similar behaviour by similar offenders. What is on the table is a submission to the effect that the requirements to direct an absolute discharge provided for at section 203.8 are met in this case as the Court should, in the view of counsel, conclude that the absolute discharge is in the accused person's best interest and not contrary to the public interest. This requirement was previously analyzed in court martial cases such as *R. v. D'Amico*, 2020 CM 2004 and more recently and *R. v. Goulding*, 2023 CM 2019.

[32] I have no hesitation to conclude that in the circumstances of this case, the absolute discharge is in the interest of MWO Anderson. He has acknowledged his responsibility for the offence of a technical nature which he committed and has rehabilitated himself. The absolute discharge would allow him to continue in his important and highly specialized role of providing security to VIPs on RCAF aircrafts. Further, the absolute discharge in the circumstances of the offender and of the offence in this case is not contrary to the public interest: such disposition serves the interest of the CAF and the broader public interest.

[33] In addition to the absolute discharge, counsel have also joined in submitting that I impose a weapons prohibition order on the authority of section 147.1 of the *NDA*. Such an order would have a tangible impact, notably in ordering the forfeiture of any weapon in the possession of MWO Anderson, including the Sig Sauer pistol subject of the offence. It would also have the effect of prohibiting MWO Anderson from

possessing firearms and weapons for a period of five years, except in the performance of his duties with the CAF. Although this is not strictly speaking a punishment, this order is not insignificant as it restricts significantly the freedoms of MWO Anderson in relation to weapons for a period of time.

[34] The proposed disposition of this case, in my view, respects the fundamental principle of proportionality in sentencing and fits squarely within the requirements to be considered before directing an absolute discharge.

[35] It is also important for me to recognize that I must consider joint submissions of counsel with respect as prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interest of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence, and as stated during submissions, have taken the interest of the offender, the chain of command and the broader public in consideration in arriving at their agreement on the proposed disposition. I trust that they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

Conclusion and disposition

[36] Considering the circumstances of the offence and of the offender, the aggravating and mitigating factors mentioned previously and the applicable principles that govern the direction of an absolute discharge, I have no hesitation to conclude that the disposition being jointly proposed would not bring the administration of justice into disrepute and will not otherwise be contrary to the public interest. The proposed disposition must therefore be accepted.

[37] MWO Anderson, you have demonstrated before me today that you accept responsibility, as you have done before your court martial. You deserve credit for that. The disposition of this case will allow you to continue your extraordinary contribution to the CAF, which very much needs people with your experience and leadership. You have what it takes to demonstrate this leadership to our junior members in the completion of your rehabilitation, and I hope that you can move on even further as a leader.

FOR THESE REASONS, THE COURT:

[38] **DIRECTS** that MWO Anderson be discharged absolutely from the offence.

[39] **ORDERS**, pursuant to section 147.1 of the *NDA* that MWO Anderson is prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance for a period beginning on the day this order is made and ending on 31 May 2029.

[40] **IN ACCORDANCE** with section 147.3 of the *NDA*, every item prohibited by this order in the possession of the offender, on the commencement of the order, is

forfeited to His Majesty to be disposed of or otherwise dealt with, as the Minister directs. The offender is ordered, within seven days to deliver to an officer or non-commissioned member appointed under the regulations for the purpose of section 156 of the *NDA*, all things that the possession of which is prohibited by the order, together with every authorization, licence and registration certificates relating thereto and held by the offender on the commencement of the order.

[41] **IN ACCORDANCE** with subsection 147.1(3) of the *NDA*, this order does not prohibit the offender from processing any things, including firearm necessary for his duties as member of the CAF.

Counsel:

The Director of Military Prosecutions as represented by Major C.R. Gallant

Major C.M. Da Cruz, Defence Counsel Services, Counsel for MWO J.A.J. Anderson