COURT MARTIAL

Citation: *R. v. Larcher-Pelland*, 2024 CM 7002

Date: 20241211
Docket: 202437

Standing Court Martial

Lieutenant-Colonel D.V. Currie VC Armoury
Moose Jaw, Saskatchewan, Canada

Between:

His Majesty the King

- and -

Sergeant R.J.P.J. Larcher-Pelland, Offender

Before: Colonel S.S. Strickey, M.J.

NOTE:	Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's "*Use of Personal Information in Judgments and Recommended Protocol*".

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Sergeant (Sgt) Larcher-Pelland, the Court has accepted and recorded your plea of guilty in respect of the only charge on the charge sheet. The Court therefore finds you guilty of this charge. As you were a master corporal (MCpl) at the time of the incident, I will refer to you as a master corporal where appropriate in my decision.

[2] Having accepted and recorded the plea of guilty with respect to this charge, the Court must now determine and pass sentence.

Joint submission made to the Court

[3] It is now my responsibility to impose the sentence. I note that prosecution and defence counsel have made a joint submission to the Court and recommend that I impose a sentence of a reprimand and a fine in the amount of $500, payable immediately.

[4] As noted by Pelletier M.J. in the recent court martial decision in *R. v. White*, 2024 CM 4002, a joint submission on sentence severely limits the Court's "discretion in the determination of an appropriate sentence." The Supreme Court of Canada (SCC) in the case of *R. v. Anthony-Cook*, 2016 SCC 43 at paragraph 32 has stated that "a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest."

[5] The now-Chief Military Judge in the 2023 court martial of *R. v. Mentel*, 2023 CM 5003 at paragraph 11 succinctly outlines the benefit of a joint submission for the accused, the participants of the court martial, the unit and the military justice system. In sum, they save resources and time while providing certainty for an accused while saving the witnesses the emotional cost of participating at trial.

[6] In addition, the Chief Military Judge stated that when the Court is considering a joint submission, trial judges consider that counsel were mindful of the statutory sentencing principles when agreeing on a joint submission. This includes that counsel took into consideration all the relevant facts when mutually agreeing upon an appropriate sentence. Submission by counsel should provide confirmation that they did in fact consider critical aspects of the case, including aggravating factors and the offender's personal situation (*supra* at paragraph 12).

[7] Therefore, it is with these considerations in mind that the Court will move forward with sentencing.

Purpose of sentencing in the military justice system

[8] As noted by the SCC in *R. v. Edwards*, 2024 SCC 15 at paragraph 59 citing an earlier SCC decision in *R. v. Stillman*, 2019 SCC 40, "Canada's separate system of military justice is designed to 'foster discipline, efficiency, and morale in the military'". This purpose is codified through section 55 of the *National Defence Act* (*NDA*). Similarly, the purposes and principles of sentencing in the military justice system differ from that of the civilian justice system as noted as subsection 203.1(1) of the *NDA* that states "the fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces."

[9] These fundamental purposes of sentencing are achieved by imposing a just punishment that takes into account one or more of the enumerated objectives outlined at subsection 203.1(2) of the *NDA* that include such things as "to promote a habit of

obedience to lawful commands and orders" (paragraph 203.1(2)(a)), "to maintain public trust in the Canadian Forces as a disciplined armed force" (paragraph 203.1(2)(b)) and "to denounce unlawful conduct and the harm done to victims or to the community that is caused by [the] unlawful conduct" (paragraph 203.1(2)(c)), among others. Section 203.2 of the *NDA* outlines the fundamental principle of sentencing that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender".

[10] There are a number of other sentencing principles stated at *NDA* section 203.3 that include "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances" (paragraph 203.3(b)) and that "a sentence should be the least severe sentence required to maintain the discipline, efficiency and morale of the Canadian Forces" (paragraph 203.3(d)).

[11] In this case, even when a joint submission is being made, the Court imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are considered and outlined in a sentencing decision that may not be required in the civilian criminal justice system (see *R. v. Gillis*, 2022 CM 4019 paragraph 6). Taken globally, I have considered all the factors outlined at Division 7.1 of the *NDA* in coming to my sentencing decision today.

Matters considered

[12] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by Sgt Larcher-Pelland. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* article 112.51. During the court martial, the prosecution confirmed that the nature of the offence does not implicate a victim impact statement. Further, prosecution indicated that Sgt Larcher-Pelland's unit declined to submit a military impact statement referred to in subsection 203.71(1) of the *NDA*.

[13] For its part, defence counsel produced several documents for the Court to consider including Sgt Larcher-Pelland's previous Performance Appraisal Reports (PAR) and Performance Evaluation Reports (PERs).

[14] In addition to this evidence, counsel then made submissions to support their position on sentence based on the facts and considerations relevant to this case, to assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

The circumstances of the offence

[15] The Statement of Circumstances, information in the documents entered as exhibits, and submissions of counsel reveal the following circumstances relevant to the offence:

(a) MCpl Larcher-Pelland joined the Canadian Armed Forces (CAF) on 28 November 2008;

(b) MCpl Larcher-Pelland is a member of the Regular Force employed with The Saskatchewan Dragoons. He is an armoured crewman;

(c) On 25 June 2023 at 1254 hours, the military police responded to a call at MCpl Larcher-Pelland's residence where he was undergoing a mental health crisis. MCpl Larcher-Pelland informed the military police that he was having suicidal thoughts and that he had firearms locked up in his basement;

(d) MCpl Larcher-Pelland was escorted to the hospital by emergency medical services and was discharged around 1100 hours on 2 July 2023;

(e) At 1531 hours on 25 June 2023, while MCpl Larcher-Pelland was in the hospital, Ms. Vanova, the recently estranged spouse of MCpl Larcher-Pelland, attended 14 Military Police Flight to ask if she could return to the matrimonial home. She also asked about the status of the guns at the residence. Ms. Vanova consented to a warrantless search of the home to seize the firearms for purposes of public safety;

(f) At 1536 hours on 25 June 2023, the military police conducted a search of the matrimonial home, whereby they discovered and seized four firearms;

(g) During their search, military police also discovered several Department of National Defence pyrotechnics, namely:

i. 1 x thunderflash C1A1, serial number CA-16F01-04;

ii. 1 x hand smoke grenade training L83A1, serial number CA-06J02-04;

iii. 1 x hand smoke grenade C8 red, serial number HFI09B08-03;

iv. 1 x hand smoke grenade C8 green, serial number HFI11E09-02, HFI11F09-06; and

v. 1 x artillery simulator projectile ground burst C1A1, serial number CA-11B16-03;

(h) These pyrotechnics are all considered pyrotechnics under DAOD 3002, and publication C-09-005-002/TS-001 *Ammunition and Explosives Safety Manual Volume 1 – Program Management and Life Cycle Safety*;

(i) The unit ammunition technician and the manager of Army pyrotechnics within the Directorate of Ammunition and Explosives Management and Engineering (DAEME), certified that all the seized items constitute materiel that belongs to the CAF;

(j) The military police seized and secured the pyrotechnics in collaboration with the unit ammunition technician; and

(k) MCpl Larcher-Pelland did not have the authority to possess any of the pyrotechnics, which is contrary to DAOD 3002-3, DAOD 3002-5 and DAOD 3002-7.

The circumstances of the offender

[16] The documents examined by the Court and the submissions of counsel reveal the following circumstances relevant to the offender:

(a) Sgt Larcher-Pelland is thirty-six years old and enrolled in the CAF on 28 November 2008;

(b) Sgt Larcher-Pelland was promoted to his current rank effective 1 December 2024; and

(c) Sgt Larcher-Pelland has no conduct sheet nor any convictions by a civil court that appear on his conduct sheet.

[17] The Court has reviewed the evidence submitted by defence counsel, in particular, the PARs and PERs outlining his recent performance.

Seriousness of the offence

[18] The Court has considered the objective gravity of the offence in this case. Section 129 of the *NDA* carries a maximum punishment of dismissal with disgrace from His Majesty's service. It is therefore an objectively serious offence that is directly linked to the requirement of maintaining a disciplined armed force.

[19] There are a broad range of circumstances that can lead to offences under section 129 of the *NDA.* In this case, the circumstances of the behaviour are significant; for a member of the CAF with (then) MCpl Larcher-Pelland's experience to have ammunition such as smoke grenades, thunderflashes and an artillery simulator in his home is serious and denotes a significant lack of judgment. This behaviour is not only objectively dangerous to the offender and innocent persons that could be injured due to his actions but is also contrary to good order and discipline.

Sentencing objectives considered in this case

[20] In the circumstances of this case, I agree with counsel that the focus be placed on the objectives of denunciation and rehabilitation in sentencing the offender.

[21] In terms of the main purpose of sentencing at section 203.1 of the *NDA*, namely the maintenance of "discipline, efficiency and morale of the Canadian Forces," the sentence proposed must be sufficient to denounce Sgt Larcher-Pelland's conduct in the military community (see *NDA* paragraphs 203.1(2)(a) to (d)).

[22] At the same time, the sentence must not be so severe as to cause a disproportionate impact on the offender and risk compromising his rehabilitation. As noted by the prosecution in the joint sentencing submission, the recommendation of a sentence of a reprimand and a fine in the amount of $500 would serve to demonstrate the military justice system denounces such conduct and would leave no doubt should CAF members possess materiel contrary to regulations, orders or instructions, that such action would be punished.

[23] Importantly, the joint submission also emphasized the principle of rehabilitation. At the time of the offence, MCpl Larcher-Pelland was dealing with a significant mental health issue. Counsel submitted that he has clearly learned from the incident, as evidenced in his recent promotion. This submission, coupled with the strong performance appraisal evidence and the particular circumstances of this case militates towards the Court to be mindful of the objective of rehabilitation (see *NDA* paragraphs 203.1 (2)(e), (f), and (i)).

Aggravating and mitigating factors

[24] The circumstances of the offence reveal the following aggravating factors:

(a) The inherent danger in possessing the materiel; namely, smoke grenades, a thunderflash and an artillery simulator. This materiel was in the unauthorized possession of the offender contrary to the DAOD series on Ammunition and Explosives. One of the objectives of this series is to "avoid, or at least minimize, personal injury or death". Possessing this materiel contrary to the DAOD, at his personal residence, risked serious injury or death to not only the offender but civilians unfamiliar with the danger of these pyrotechnics; and

(b) The rank of the offender at the time of the offence. The appointment to master corporal demonstrates that he has displayed leadership skills and as a master corporal, has authority and can command other corporals. His lapse in judgement demonstrates that he failed in his duties as a leader in the CAF and betrayed the trust of his chain of command and subordinates.

[25] That said, the Court acknowledges the following mitigating factors:

(a) Sgt Larcher-Pelland's guilty plea today avoids 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 of the broader military community;

(b) The absence of a criminal record and conduct sheet revealing precedents of similar misbehaviour;

(c) His age and his career potential as a member of the CAF. Evidence presented on the joint submission outlines that Sgt Larcher-Pelland has potential to contribute in a positive way to the CAF in the future. He has recently been promoted which demonstrates the confidence the chain of command has in him to continue in a leadership role;

(d) The fact that Sgt Larcher-Pelland had to face this court martial. There are likely colleagues and the public that are either present in the court or on-line. This has a deterrent effect on the offender; and

(e) As noted by prosecution and defence during their respective submissions, this incident was out of character for the offender. At the time of the incident, he was experiencing a significant mental health crisis that resulted in hospitalization. As I have noted above, he otherwise has demonstrated good potential to serve and continue to serve in the CAF.

Assessing the joint submission

Parity

[26] Turning now to the parity principle, the Court examined precedents for similar offences to determine whether the joint submission is like sentences imposed on similar offenders. Sentences imposed by military tribunals in similar cases are useful to appreciate the kind of punishment that would be appropriate in this case.

[27] In the context of submissions to demonstrate that the joint submission was within a range of similar sentences for similar offences, the prosecution and defence counsel brought several cases to my attention, showing that the proposed sentence fits in an acceptable range for similar cases, although no case is the same. The Court has considered the following cases:

(a) *R. v. Cole*, 2010 CM 4003: Private Cole pleaded guilty to a charge contrary to section 114 of the *NDA*, in stealing C4 explosives, a time fuse and a detonation cord. The joint submission of a fine in the amount of $600 dollars was accepted. The prosecutor did not request the Court make a weapons prohibition order;

(b) *R. v. Dubé*, 2008 CM 3009: Corporal (Cpl) Dubé pleaded guilty to a charge contrary to section 130 of the *NDA* (subsection 82(1) of the *Criminal Code*) for possession without lawful excuse of an explosive substance. He admitted to possessing a smoke grenade and two thunderflashes. A joint submission of a reprimand and a fine in the amount of $500 was accepted by the Court. The military judge considered whether the case was an appropriate one for a weapons prohibition order but did not grant the order;

(c) *R. v. Halstead*, 2010 CM 3018: MCpl Halstead pleaded guilty to one charge contrary to subsection.129(1) of the *NDA*, an act to the prejudice of good order and discipline. MCpl Halstead had in his possession, without lawful excuse, several blank and live ammunition along with different grenades and pyrotechnic devices. A joint submission of a fine in the amount of $2,000 was accepted by the Court. There was no mention of a weapons prohibition order;

(d) *R. v. Nadeau*, 2011 CM 4016: Cpl Nadeau pleaded guilty to one charge contrary to section 115 of the *NDA* for having received property obtained by the commission of a service offence, knowing that this property had been so obtained. Cpl Nadeau had in his possession several explosive devices and ammunition including a smoke grenade, parachute flares, thunderflashes along with blank and live ammunition. A joint submission of a reprimand and a fine in the amount of $1,500 was accepted by the Court. Counsel for the prosecution recommended to the Court that it was unnecessary to order a weapons prohibition order, and the Court agreed; and

(e) *R v. Wolfe* 2005 CM 48: Bombardier Wolfe pleaded guilty to one charge of possession of an explosive substance. He had in his possession a simulated projectile ground burst. There was no joint submission proposed in this case. The military judge sentenced the offender to a reprimand and a fine in the amount of $1,200. The Court considered, but did not make, a weapons prohibition order.

[28] As noted by the prosecution during the sentencing submission, while the proposed sentence is fair, it is on the lower end of the spectrum given the objective seriousness of the offence. The issue for the Court to assess is not whether I agree with the joint submission being proposed or whether the Court could render a more appropriate sentence. As stated earlier, the Court may depart from the joint submission of counsel only if I consider that the proposed sentence would bring the administration of military justice into disrepute or would otherwise be contrary to the public interest.

[29] Having considered the submissions from the prosecution and defence, the proposed sentence is not so markedly out of line with the expectations of reasonable persons aware of the circumstances that they would view it as a breakdown in the

proper functioning of the military justice system. In this case, the proposed sentence meets the objectives of denunciation while focused on the rehabilitation of the offender.

[30] As recognized by the Supreme Court of Canada, trial judges must refrain from tinkering with joint submissions if their benefit can be maximized. Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the accused. In addition, trial judges should approach the joint submission on as "as is" basis (see *Anthony-Cook* at paragraph 42, 44 and 51). The Court notes in this case, even though pyrotechnics such as smoke grenades and artillery simulators form the basis of the charge against the offender, no weapons prohibition order was sought. Referring to the guidance in *Anthony-Cook*, if the parties have not asked for a particular order, the trial judge should assume that it was considered and excluded from the joint submission (*supra*, paragraph 51).

[31] In consideration of these principles and having reviewed the case law presented by the prosecution and the submissions from both prosecution and defence as it relates to a weapons prohibition order pursuant to section 147.1 of the *NDA*, I have come to the conclusion that such an order is not necessary nor desirable in the interest of safety of any persons or of the offender in the circumstances.

[32] Counsel are highly knowledgeable about the circumstances of the offender and the offence and, as stated during submissions, have taken the interests of the offender, the chain of command and the broader public into consideration in arriving at their agreement on the proposed sentence. I trust that they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[33] In summary, considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I cannot conclude that the sentence being jointly proposed would bring the administration of military justice into disrepute or would otherwise be contrary to the public interest. I must, therefore, accept it.

[34] Sgt Larcher-Pelland, you have demonstrated that you accept responsibility for this offence with your guilty plea. This offence is serious, particularly considering your appointment as master corporal at the time of the offence. You are expected to lead teammates both domestically and on international operations. It goes without saying that possessing unauthorized materiel such as smoke grenades, a thunderflash and an artillery simulator is inherently dangerous, especially in your home. This could have injured you or unsuspecting civilians. This is why the CAF has such stringent regulations in place. That said, the evidence demonstrates that this was an isolated incident. Parallel to the incident in question, you were dealing with a mental health crisis that caused you to be hospitalized. The Court notes that in reaching out for help in such situations takes courage and is emblematic of a leader; and you are to be commended for that.

[35] The Court concurs with counsel that it is an isolated incident. You are a good soldier with potential to continue serving in the CAF in a leadership role. To that end, you have been promoted to sergeant and have been given even greater leadership responsibility. I am confident that you will learn from this experience as you move forward with the important leadership responsibilities and set a proper example for your subordinates and other members of your unit.

FOR THESE REASONS, THE COURT:

[36] **SENTENCES** Sgt Larcher-Pelland to a reprimand and a fine in the amount of $500, to be paid forthwith. If you are released from the CAF for any reason before the fine is paid in full, then the outstanding unpaid amount is due and payable prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Major B.J. Richard

Commander B.G. Walden, Defence Counsel Services, Counsel for Sergeant R.J.P.J. Larcher-Pelland