Court Martial Appeal Court of Canada

Cour d'appel de la cour martiale du Canada

Date: 20160909

Docket: CMAC-588

Citation: 2016 CACM 2

[ENGLISH TRANSLATION]

In attendance: **CHIEF JUSTICE BELL**

BETWEEN:

CORPORAL R.P. BEAUDRY

Applicant

and

HER MAJESTY THE QUEEN

Respondent

Motion dealt with in writing without appearance of the parties.

Order issued in Fredericton (New Brunswick) on September 9, 2016.

REASONS FOR ORDER: CHIEF JUSTICE BELL

Court Martial Appeal Court of Canada

Cour d'appel de la cour martiale du Canada

Date: 20160909

Docket: CMAC-588

Citation: 2016 CACM 2

[ENGLISH TRANSLATION]

In attendance: **CHIEF JUSTICE BELL**

BETWEEN:

CORPORAL R.P. BEAUDRY

Applicant

and

HER MAJESTY THE QUEEN

Respondent

ORDER AND REASONS

CHIEF JUSTICE BELL

[1] On July 14, 2016, the Court Martial found Corporal R.P. Beaudry (the applicant) guilty, under section 130 of the *National Defence Act*, R.S.C. (1985), c. N-5 [Act], of having committed sexual assault causing bodily harm contrary to section 272 of the *Criminal Code*, R.S.C. (1985), c. C-46 [Criminal Code]. On July 15, 2016, the Court Martial sentenced the applicant to 42 months of incarceration and ancillary conditions. The applicant filed a Notice of Appeal against

the guilty verdict and, on July 22, 2016, filed this motion in which he seeks release under section 248.2 of the Act until this Court rules on his appeal.

[2] Pursuant to section 248.3 of the Act, the applicant must establish on the balance of probabilities: (1) that the appeal is not frivolous; (2) that he will surrender himself when directed to do so; and (3) that his imprisonment is not necessary in the interest of the public or the Canadian Forces. Other than the reference to the interest of the Canadian Forces, these factors are also found in section 679(3) of the Criminal Code. These criteria are cumulative. If the applicant fails to establish any one of these three criteria, his motion must be dismissed.

[3] I consider it unnecessary to rule on the nature of the appeal because the applicant does not meet factors two (2) and three (3). I am of the opinion that the applicant has not established, on the balance of probabilities, that he will surrender himself when directed to do so, nor that his imprisonment is not necessary in the interest of the public or the Canadian Forces. I will explain.

I. Possibility that he will surrender himself

[4] During the 22 months between his release after committing the criminal act and the date of the guilty verdict, he was found guilty of four (4) absences without leave. He also faces thirteen (13) other charges, including a charge for possession of cocaine contrary to subsection 4(1) of the *Controlled Drugs and Substances Act*, SC 1996, c. 19, punishable under paragraph 130(1)*(a)* of the Act. In addition to the four convictions for absences without leave, the applicant stated to his warrant officer during the Court Martial, “if I am given the chance I am going to

cross the border." Faced with these facts, I am satisfied that the applicant has not established, on the balance of probabilities, that he will surrender himself if directed to do so.

II. Interest of the public or the Canadian Forces

[5] I have read the entirety of the decision by the Court Martial judge with respect to both the verdict and the sentence. The public interest component requires that I take into consideration the seriousness of the offence, the strength of the grounds of appeal and the inherent delays in entering the appeal for hearing: *R. v. Daniels* (1997), 103 C.A.O. 369, 119 C.C.C. (3d) 413. The offence is serious. Without going into detail, this was a particularly violent sexual assault. The applicant is no longer entitled to the presumption of innocence. Without ruling on the issue of whether the only ground of appeal is frivolous, it suffices to say that the legal issue raised in the appeal was analyzed at length by the Court Martial judge. Moreover, for the applicant to be successful in his appeal, this Court would have to reverse its own decision in the recent judgment *R. v. Royes*, 2016 CMAC 1. In this regard, his grounds of appeal are somewhat weak. In addition, I note that this Court can hold a hearing as soon as the parties are ready to proceed. The delay in entering the appeal for hearing and in having it heard is not significant. For these reasons, I am of the opinion that the applicant has not established that his imprisonment is not necessary in the interest of the public.

[6] Lastly, I note that it is important for the public to have confidence in the administration of justice and the Canadian Forces (*R. v. Nguyen (1997), 97 B.C.A.C. 86, 119 C.C.C. (3d) 269*; *R. v. Black*, [2008] N.B.C.A. no 484, 342 N.B.R. (2d) 12; *R. v. Christie*, [2013] N.B.C.A. no 225, 108 W.C.B. (2d) 681). I am of the opinion that if I were to order the release of the applicant until his

appeal has been heard and determined, a public that was aware of the Court Martial judge's conclusions and the seriousness of the offence would not have confidence in the administration of justice in general, or within the Canadian Forces.

[7] On July 11, 2016, the Court Martial judge made an order under section 179 of the Act and section 486.4 of the Criminal Code, prohibiting the publication or the dissemination of any information that could establish the complainant's identity. This order will remain in effect until further order of this Court.

THIS COURT ORDERS that the applicant's motion for release until this Court rules on his appeal is dismissed.

"B. Richard Bell"
Chief Justice

COURT MARTIAL APPEAL COURT OF CANADA

SOLICITORS OF RECORD

DOCKET:	CMAC-588
STYLE OF CAUSE:	CORPORAL R.P. BEAUDRY v. HER MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES

ORDER AND REASONS:	BELL C.J.
DATED:	SEPTEMBER 9, 2016

WRITTEN REPRESENTATIONS BY:

Lieutenant-Commander Mark Létourneau	FOR THE APPLICANT
Major Prem Rawal	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Defence Counsel Services Ottawa, Ontario	FOR THE APPLICANT
Director of Military Prosecutions Ottawa, Ontario	FOR THE RESPONDENT