

Court Martial Appeal Court
of Canada



Cour d'appel de la cour martiale
du Canada

Date: 20220617

Docket: CMAC-616

Citation: 2022 CMAC 6

[ENGLISH TRANSLATION]

Present : BELL C.J.

BETWEEN:

SERGEANT A.J.R. THIBAUT

Applicant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held via videoconference organized by the Registrar in Ottawa, Ontario,

On May 25, 2022.

Reasons for order delivered at Ottawa, Ontario, on June 17, 2022.

REASONS FOR ORDER BY:

CHIEF JUSTICE BELL

Court Martial Appeal Court
of Canada



Cour d'appel de la cour martiale
du Canada

Date: 20220617

Docket: CMAC-616

Citation: 2022 CMAC 6

BETWEEN:

SERGEANT A.J.R. THIBAUT

Applicant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR ORDER

I. Introduction and relevant facts

[1] On February 18, 2020, a military judge found Sergeant (Sgt.) A.J.R. Thibault guilty of an offence under subsection 130(1) of the *National Defence Act*, R.S.C. 1985, c. N-5 (*NDA*), i.e., sexual assault (section 271 of the *Criminal Code*, R.S.C. 1985, c. C-46, (*Criminal Code*)). On February 26, 2021, the military judge imposed a sentence of eighteen months' imprisonment as well as other conditions.

[2] A brief summary of the facts and circumstances pertaining to the offence is useful. The conviction is based on events that occurred in the early morning of August 20, 2011. The complainant reported the incident, for the first time, to civilian authorities on January 16, 2012. In November 2012, after having been advised by the civilian authorities that no charges would be laid, the complainant reported the incident to the military police. At the conclusion of the military investigation, charges were preferred against Sgt. Thibault on June 19, 2014. From 2015 to 2020, Sgt. Thibault was not tried due to a number of other appeals before the Supreme Court that could have had an impact on his trial (see *R. v. Cawthorne*, 2016 SCC 32, [2016] 1 S.C.R. 983; *R. v. Stillman*, 2019 SCC 40, [2019] 3 S.C.R.144).

[3] On April 22, 2022, this Court dismissed Sgt. Thibault's appeal and affirmed the guilty verdict. On April 26, 2022, Sgt. Thibault filed an application for leave to appeal to the Supreme Court of Canada from the judgment of this Court. In support of his application, Sgt. Thibault contends that the same question will be decided by the Supreme Court in *R. v. Edwards*; *R. v. Crépeau*; *R. v. Fontaine*; *R. v. Iredale*, 2021 CMAC 2 [*Edwards et al.*]. The application for leave to appeal to the Supreme Court of Canada from *Edwards et al.* was filed on September 10, 2021. The Supreme Court has not yet pronounced on that application. On April 28, 2022, Sgt. Thibault filed a motion for a stay of execution of the judgment rendered by this Court, including an order for release, under section 65.1 of the *Supreme Court Act*, R.S.C., 1985, c. S-26 (SCA), until the Supreme Court has pronounced on his application for leave, or his appeal, as the case may be.

II. Issue

[4] There is only one question to be decided in this case. Does Sgt. Thibault meet the three requirements of the applicable test in order that this Court may order a stay of execution of the sentence? That is to say, is there a serious question to be tried, will irreparable harm result if the stay is not granted, and does the balance of convenience favour the granting of the stay? See *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385; *R. v. Royes*, 2016 CMAC 3; *R. v. Stillman*, 2019 CMAC 1.

III. Analysis

[5] Sgt. Thibault contends that he has met all three requirements of the applicable test for a stay of execution of judgment under subsection 65.1(1) of the *LCS*, as construed by *Royes* and *Stillman, supra*.

[6] The respondent agrees that the first and second branches of the test are met. The respondent agrees that there is a serious question to be tried and that irreparable harm will result if the stay is not granted, should the Supreme Court of Canada decide that Sgt. Thibault's conviction is based upon an unconstitutional law.

[7] However, the respondent contests the motion on the ground that the applicant has not shown that the balance of convenience weighs in favour of his release. The respondent points to the seriousness of the offence for which the applicant has been found guilty and the right of the victim to a measure of closure. The respondent also notes that the application for leave to appeal

raises a unique constitutional question that has been already decided by this Court in five different cases (*Edwards et al., supra*; *R. v. Proulx*; *R. v. Cloutier*, 2021 CMAC 3; *R. v. Christmas*, 2022 CMAC 1; *R. v. Brown*, 2022 CMAC 2; *Thibault, supra*) and that the applicant does not contend that this Court has erred in its conclusions concerning his guilt, nor does he challenge the facts surrounding his crime. Finally, the respondent submits that the general public and the Canadian Armed Forces must have confidence that the decisions of this Court will be executed in a timely manner.

[8] The applicant, however, says that his release will not undermine confidence in the administration of the justice. He submits that, even in the case of a very serious offence, the release of an applicant will not necessarily undermine confidence in the administration of justice. Such is the case where public safety or flight concerns are negligible, and where the grounds of appeal clearly surpass the “not frivolous” criterion (see *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R.250, aux paras. 51, 66). He submits, in addition to what has already been demonstrated, that he is on the right track and that he is still serving in the Canadian Armed Forces.

[9] In *Oland, supra*, the Supreme Court explained that the public interest criterion consists of two components: public safety and public confidence in the administration of justice. In this case, the applicant poses no flight risk and the risk he poses to the public is minimal. He has always appeared before the Court when required. In addition, in the ten years since the sexual assault for which he was convicted, he has lived in the community without incident.

[10] As to the second component of the public interest criterion, i.e., public confidence in the administration of justice, the Supreme Court, in *Oland, supra*, wrote:

[...] public confidence is to be measured through the eyes of a reasonable member of the public. This person is someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values. (*R. v. St-Cloud*, 2015 SCC 27, [2015] 2 S.C.R.328, par. 74-80).

(Par. 47)

[11] The facts of this case are somewhat similar to *Royes, supra* (serious sexual assault; no risk of flight and the appeal only bears on a constitutional question). I reach the same conclusion herein as in *Royes* for the four following reasons. First, the events that resulted in the conviction date more than ten years ago. Second, the complaint was brought to the attention of the civilian authorities in 2012. It was only the military justice system, which took the complaint seriously. Third, at the time of writing these reasons, the Supreme Court has not yet decided whether it will grant the application for leave to appeal in *Edwards et al., supra*, which is the basis for the motion herein. Finally, this Court has pronounced on this issue five times, in nine appeals, including this appeal. In light of these observations, I am of the view that a thoughtful and dispassionate individual, informed of the circumstances of the case and respectful of society's fundamental values would expect that the judgment of this Court be executed in a timely manner. The time has come for the execution of the decisions of the Court Martial and of this Court, in particular given that the Supreme Court of Canada has not yet pronounced on the application for leave to appeal from the decision of this Court in *Edwards et al.*

IV. Conclusion

[12] For all of these reasons, the motion to stay the execution of the judgment rendered in *R. v. Thibault*, 2022 CMAC 3 is dismissed.

« B. Richard Bell »

Chief Justice

COURT MARTIAL APPEAL COURT OF CANADA

SOLICITORS OF RECORD

DOCKET:

CMAC-616

STYLE OF CAUSE:

SERGEANT ALEXANDRE
THIBAUT v. HER MAJESTY
THE QUEEN SA MAJESTÉ LA
REINE

PLACE OF HEARING:

BY VIDEOCONFERENCE

DATE OF HEARING:

MAY 25, 2022

REASONS FOR ORDER BY:

CHIEF JUSTICE BELL

DATED :

JUNE 17, 2022

APPEARANCES:

Major Éric Carrier

FOR THE APPLICANT

Major Patrice Germain

FORTHE RESPONDENT

SOLICITORS OF RECORD:

Defence Counsel Services
Gatineau, Quebec

FOR THE APPLICANT

Canadian Military Prosecution Service
Ottawa, Ontario

FOR THE RESPONDENT