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IN THE COURT MARTIAL

held at

MILITARY COURT CENTRE, CATTERICK

on the

13th February 2025

in the case of

REX

V

30328542 Able Seaman Craig KENNEDY

His Majesty's Naval Base, Clyde

JUDGE ADVOCATE

Judge Legard

Assistant Judge Advocate General

SENTENCING REMARKS

JUDGE ADVOCATE: Engineering Technician Kennedy. You have been convicted after trial of two charges of sexual assault. It is in respect of those charges that you fall to be sentenced today. Please remain seated for now and I will invite you to stand later.

The offending dates back to May 2023. At that time, both yourself and [name redacted] were ship mates serving aboard HMS Northumberland and you were deployed to Iceland. You were previously not well known to one another but during the course of an evening you struck up a conversation,

which began as a light-hearted one. That continued for some time whilst you were in the company of others in the American Bar in Reykjavík. However, as [name redacted] was looking in a different direction to you, whilst in a state of extreme intoxication, you grabbed her first on her bottom and then subsequently touched her on her vaginal area.

Those assaults were both caught on CCTV. Although you accept that you were drunk, you claimed to be only mildly so and in full command of your faculties. That assertion was patently false. You can be seen on CCTV staggering around with little, if any, control of your physical movements.

You refused to accept any responsibility for your actions that night and you continue to do so. You maintained your denials in the face of overwhelming CCTV evidence, and you continue to do so. You contended that the alleged touching was something that you simply would not have done, or alternatively it was or must have been accidental. Your story, namely that the victim, [name redacted] had either fabricated or wholly misinterpreted your actions and behaviour, was rightly and comprehensively rejected by the Board in the face of overwhelming evidence.

We have had read out to us the victim personal statement from [name redacted] and it is clear that this offending has had a profound and lasting impact upon her. It continues to cause her substantial distress for which she required anti-depressant medication. She is currently awaiting professional therapy. She suffers with sleep disturbance; she has become socially isolated and reclusive. She has suffered a loss of confidence, especially in the company of men, and a loss of self-esteem. It is a matter of considerable regret to the Board that this incident has led [name redacted] to apply to leave the Royal Navy. It demonstrates the impact that offending of this nature has - not simply upon the individuals themselves but also upon the service and its wider operational effectiveness.

Nevertheless, we hope that the conclusion of these proceedings might assist [name redacted] in putting this behind her and focusing on what the Board hopes is a better future for her.

The revised Judge Advocate General's Guidance encourages us to apply the Sentencing Council Guidelines for offences of this type but, in doing so, we must consider any features of service life that might serve to either heighten culpability or harm or indeed aggravate or mitigate the offence. We must, of course, be careful to avoid any double counting. I am just going to quote briefly from the revised guidance as follows, and by doing so, attempt to highlight why offences of this nature are considered to be so serious in a service context.

I quote as follows:

“Service personnel have little choice where and with whom they serve. They work, eat and socialise together. Sexual offending undermines the bond of trust which must exist between those who serve together. It affects morale and ultimately operational effectiveness. Dismissal will be appropriate in all but the most exceptional case.”

We turn now to the Sentencing Council Guidelines for sexual assault. Both parties contend for a 3B categorisation, and the Court agrees. Notwithstanding the contents of the victim personal statement (and there is no doubt that the harm suffered by [name redacted] was and remains significant) we take the view that this offending can properly be assessed by reference to Category 3 harm. In terms of culpability there are no specified factors present in the case that might give rise to a placement within Category A. Category 3B provides for a start point of a high-level community order with a range of a medium level community order to 26 weeks’ custody. There are no service factors present in the case that justify a higher categorisation than that.

The Judge Advocate General’s Guidance also makes clear that a sentence of 30 weeks’ detention with a range of 25 to 35 weeks will be the service equivalent of a high-level community order (the start point for this offending). It must be stressed that there is little to compare a sentence of imprisonment with service detention. Detention in MCTC is a significantly more benign environment than prison and in Colchester there is a very strong emphasis on rehabilitation. In contrast to imprisonment there are no licence or supervision requirements upon release from detention. Detainees receive considerable support from the staff in Colchester. Those who have been dismissed will be placed in D Company where they will receive pre-release training which is aimed at rehabilitation and resettlement. That is in order to prepare that individual for the transition to civilian life. Over and above all of that, those convicted of “minor”, and I use the word advisedly, sex offences can now receive tailored offender programming delivered on a bespoke basis.

In terms of aggravating factors, we have taken into account the fact that you were heavily under the influence of alcohol at the time you committed these assaults. We also take into account the fact you were deployed to a host country. Those matters serve to increase the sentence from its notional start point.

On the other hand, in mitigation, you are 25 years of age, an Engineering Technician with the Royal Navy. You have just under five years unblemished service. You have no previous convictions, and you are therefore of hitherto positively good character. The offending was clearly out of character, and you were off duty at the time.

We have read a pre-sentence report, the contents of which are very helpful and self-explanatory. We are troubled by the absence of remorse but troubled more so by the wholesale absence of any impact awareness upon the victim as well as the limited understanding of the effect that this sort of offending has not only upon the individuals concerned but upon the service to which you belong.

We note that in your own plea of mitigation that was read out, just now by Lieutenant Commander Patterson, there was no mention, no mention at all, of the victim. The pre-sentence report itself says as follows:

“ET Kennedy expressed no victim empathy and was more focused on the impact that this offence would have upon him.”

You are assessed as being at a low risk of reconviction but medium risk of causing serious harm to others.

We have read a number of character references from your chain of command, namely Lieutenant Commander Brennan, Commander Herridge and from Chief Petty Officer Griggs. We have read references from your sister, from your grandfather and from a former employer. All of whom attest to your personal and professional qualities. I do not propose to rehearse their contents here but suffice to say that those references have had significant impact upon our overall decision making. We have taken into account all that has been very ably expressed on your behalf by Lieutenant Commander Patterson. You have much to thank him for.

We cannot, of course, give you any credit for guilty plea in this case.

Could you please replace headdress and stand? Thank you.

ET Kennedy, this type of behaviour is unacceptable today. Women are rightly at the front and centre of the modern armed forces and if our armed services, if the Royal Navy is to remain operationally effective, then it must be inclusive. All people, whatever their sex, must be able to come to work, attend a social event such as this in the safe and secure knowledge that they will not be sexually touched but instead be afforded the respect that they properly deserve. Your behaviour was inexcusable and represents a betrayal of the values and standards of the Royal Navy and also tarnishes the reputation of the uniformed services more widely. It goes without saying that anyone in the civilian world, convicted of such an offence, would inevitably be dismissed for gross misconduct.

That is no different here where the services, of course, demand higher standards of behaviour. This offending is serious enough to warrant dismissal and you will therefore be dismissed from His Majesty's Armed Forces.

Having considered the matter with care, noting the victim impact and the other matters to which we have referred, we have also concluded that this offending is serious enough to warrant a sentence of immediate detention. We have determined that that is the most appropriate disposal for you and that it is one that is commensurate with the seriousness of this offending. We do not conclude that the custody threshold had been crossed. The Board concluded that a sentence of detention was more appropriate than a service community order. The latter is likely to be drawn out over a period of some 18 to 24 months and the Board took the view that a shorter period of detention represents for you the best opportunity for rehabilitation.

For the avoidance of doubt, and having given detailed consideration to the relevant guidance on the imposition of custodial sentences contained in the Sentencing Council Guidelines (together with the guidance on suspending sentences of detention set out within the Judge Advocate General's Guidance), we did not consider it appropriate to suspend such a sentence. We decided that an appropriate punishment could only be achieved by immediate detention.

We were particularly concerned and conscious of the delay in this case and we took into account your good character and your lack of previous convictions. On the other hand you have demonstrated no remorse, you were not particularly young or immature, and your potential for rehabilitation, which is an important feature in this case, is a matter best addressed, in our view, within the controlled environment of Colchester.

We took charge 2 as our headline charge, namely the touching of a vagina (under her skirt albeit over her tights) being clearly the more serious charge and the Board disagrees with Commander Patterson's interpretation of the evidence in relation to that charge. You have clearly touched her on her vagina and, but for her manoeuvring herself in the way she did, you may have been facing an altogether serious charge. We took as our start point 32 weeks; the aggravating factors identified above raised that sentence to 40 weeks, but the pendulum then swung in the opposite direction to take account of the mitigation in your case. That led us to a sentence 34 weeks' detention.

There will be a 20-week sentence of detention of count 1 to run concurrently.

You will serve up to two thirds of that 34-week sentence in detention before you are released and that is subject to the possibility of further remission at the discretion of the commandant for good behaviour.

In light of this sentence, we decided not to make a service compensation order. The Board is concerned that orders that appear to monetise a sexual assault can have the opposite effect by aggravating the impact upon the victim and prolonging that individual's recovery as opposed to accelerating it.

I know that immediate detention may come as a shock to you and no doubt to your family that sit behind you. It is entirely up to you now to go down to Colchester and take advantage of what the staff down there can offer you over the next 21 weeks or so. It is not that long a time and you will get a significant amount of assistance and support when there. If you engage with the staff, maintain a positive frame of mind and demonstrate the same qualities in MCTC as you have done hitherto professionally then you will emerge from detention much the better for it. You will also be much better equipped to meet the challenges that lie ahead in civilian life. That is entirely a matter for you and the ball is firmly in your court.

Mr President will you please pass sentence?

SENTENCE

PRESIDENT OF THE BOARD: Engineering Technician Kennedy you are hereby sentenced to 34 weeks' service detention at MCTC and dismissed from his Majesty's Armed Services. Court Orderly, please continue.

ADDITIONAL NOTE: As a consequence of the sentence which was passed, AB Kennedy was placed on the Sex Offenders Register for 5 years from the date of conviction.