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IN THE COURT MARTIAL

held at

MILITARY COURT CENTRE, CATTERICK

on the

14th May 2025

in the case of

REX

V

30107984 Corporal Darren Ross Alexander

4th Battalion, The Royal Regiment of Scotland

JUDGE ADVOCATE

Judge Smith

Assistant Judge Advocate General

SENTENCING REMARKS

JUDGE ADVOCATE: Corporal Alexander, I want you to remain sitting down while I explain to you the sentence that we are going to impose upon you, why we have come to the view that that is the appropriate sentence and I make sure that you understand the effect of the sentence upon you. Now, that might take longer than you are expecting and I know understandably you are particularly anxious to know what the sentence is. But you have been patient so far so can I ask for your continued patience while I deal with this because it is important. Then at the end of that I am going to ask you to stand up, face the President and he will formally pass the sentence upon you.

So, you are 36 years old, you have been in the Army for 15½ years, and you fall to be sentenced now following your conviction at trial yesterday for a single offence of assault by penetration. That offence took place on 5th December 2023. The victim of your offending was [name redacted], a Private soldier, serving in the same battalion as you, the 4th Battalion The Scottish Regiment. The offence took place in the single living accommodation room that was allocated to [name redacted]. To all intents and purposes, it was his home, in fact in his achieving best evidence interview he specifically refers to the fact that he considered it to be his own home. [name redacted] was only 18 at the time of this offence. The two of you knew each other; you had first met when he was a recruit at phase two infantry training at the ITC in Catterick. You were re-posted back to your battalion having finished your tour as an instructor there at about the same time that he graduated from his recruit training. And so you ended back in the 4th Battalion together.

You were not in his direct chain of command but you were in a position of responsibility towards him. You were a Corporal in his platoon and the Board are well aware of the dynamics at the junior end of infantry companies, about the level of trust that any young soldier would have in a Platoon Corporal. You both describe your relationship with each other as a friendly and professional relationship. There is no suggestion that prior to 5th December 2023 that the relationship was anything other than that. On the night of 4th December a number of the members of the company went to Richmond for a company social event. A lot of people drank heavily. On the evidence of [name redacted] and on your evidence you both had had a significant amount to drink by the time you returned to the company lines where the drinking continued until about 2 o'clock in the morning.

He returned to his room to find you already in there asleep. You were not a welcome visitor but there was no sinister aspect so far as he was concerned and he and a number of others removed you, perhaps a little ceremony, back to your room. But a few minutes later you were back there again, again without his permission asleep in his bed and having made a mess because as a result of your intoxication you had vomited all over the bed. Well, no doubt still considering you to be no more than a nuisance at that stage he decided he was not going to try and remove you again and he would just get to sleep on his own settee. He got off his lower clothing apart from his boxer shorts and a jumper and covered himself with a blanket and went to sleep. Sometime later he was woken from sleep by you taking hold of his leg. Initially he took the view that that was just something that somebody might do in sleep, perhaps that they had turned over, but very shortly after that was confronted with you out of the bed on all fours and that was the point that he said, and the Board were sure was correct, you penetrated his anus with your finger. It is a serious offence. He pushed you away, he left the room, he made an immediate complaint as to what you had done to a Corporal who was passing by.

The next morning you were still in the room no doubt still affected by the alcohol and you slept in until later in the morning when you were encouraged to move out of the room by others. Although the chain of command had been informed promptly about this, unfortunately the chain of command took more time than we consider appropriate to react to [name redacted]'s prompt complaint and therefore it came to pass that two days later, and significantly more than 48 hours later, you were interviewed by the Service Police. You told them as you told us that you had got no recollection with regard to what had happened in the room. There was a video that [name redacted] had taken the next morning so it was difficult for to deny that you had in fact been there and we accept that you acknowledge that that was the position and did not challenge it. And that was the position that you maintained through your trial. You did not say that you had not committed this offence, your evidence was that you would not commit an offence of this nature. You could not say any more than that because of your assertion that you had just got no recollection with regard to anything that happened in his room. Counsel on your behalf submits, well at least this was not a case where, as often is the case, it had to be suggested to this victim that he was lying in his evidence. That is a factually accurate observation and despite the profound effects that this episode has led to with [name redacted], which I will deal with in a moment, at least it can be said that that is one insult or one further insult that he did not have to endure.

Well, the offending has had a significant effect on [name redacted]. Sexual offences of this nature always have a significant effect on their victims and that is why the sentence start points for offences such as these are as high as they are. But just to summarise what [name redacted] says he has turned to the abuse of alcohol as a result of this offence. He says he has become reclusive in his ability to deal with his peers, it has had a significant effect on his mental health, his relationships with his family and other people have suffered. Significantly, given that we are a Service court and we have to consider the effect of your behaviour on the Services in general, he no longer wishes to serve in the Armed Forces and his career is coming to an end. He has nightmares of the incident, he has tried to take his own life on two occasions and says, "I cannot live with these memories which keep coming back to me, this has completely changed me as a person and robbed me of who I was".

Additional material that we have seen is a number of references with regard to your career in the military from people who have worked with you and speak highly with regard to your behaviour as a soldier and the service that you have given over those 16 years. Again, specifically, you have a commendation from the Chief of the General Staff for what was undoubtably creditable behaviour in your prompt dealing with a dangerous incident on a grenade training range. A student dropped a

grenade, it endangered both your safety, you were commended for your quick thinking and no doubt a degree of courage in your actions.

So, what is the appropriate sentence that we should pass in this case. Sentencing Courts do not pull sentences out of thin air. Where there are sentence guidelines, then we are required to follow those sentence guidelines. The first guideline that we have considered is what is called the Sentencing Council guideline for penetrative sexual offences. That requires us to consider the degree of harm that was caused and your culpability. The degree of harm perhaps speaks for itself. Culpability in language that is perhaps more easy to understand, your blameworthiness. The prosecution say this is a category 2 harm case. The prosecution draw our attention to a number of factors that could arguably put the case into category 2. The prosecution do not submit that all these factors do in fact do that. The question first of all with regard to whether the psychological harm on [name redacted] is properly described as severe or not. Well, every sexual offence is likely to lead to a significant psychological effect upon a victim and the Court should be slow to go to the position, certainly not automatically, that that is severe psychological harm. But if this is not severe psychological harm on [name redacted] given what I have said with regard to the matters he draws to our attention in his victim personal statement, the Board are of the view that if it is not there it very, very nearly is in that category.

Secondly, the prosecution invite us to consider that this was uninvited entry into the victim's home. Well, we take the view that a soldier's single living accommodation is analogous to a victim's home; it is his own personal space in the military. The Board have all got experience with the reverence and respect that is expected in the Services of people's own personal living space. The Members of this Board are well able to understand the importance of personal space. We take the view that the case does fit into that category. You did have uninvited entry into what effectively was the victim's home and there you abused the position that you were in as a guest, a visitor, in that home to sexually assault him. We have been asked to consider whether this defendant (sic) was a particularly vulnerable victim, also a category 2 harm factor. There is no doubt that somebody who is asleep when they are sexually assaulted is to be viewed as particularly vulnerable. The courts have settled upon that position which is now beyond argument.

One of the most recent cases was (indistinct) [2022] EWCA 1332. We have been referred to another case round about the same time from the Court of Appeal R v Makari [2022] EWCA 1299 where the judge in the Crown Court had taken the view that the victim was particularly vulnerable as a result of the alcohol amongst other things that she had taken. The Court said that she ought not to have been treated as particularly vulnerable, she was not asleep at the time of the offence. Again, the Board's

position is this. If the victim was not particularly vulnerable by the fact that he was asleep he was particularly vulnerable by being asleep only moments before the act that amounts to the offence which you were convicted. He was asleep until he felt your hand touch his leg and it was only moments after that that the assault upon him took place. We take the view that it is a factor that if not clearly in that bracket is very nearly in that bracket and in any event if we took the view that this case was not a category 2B case that factor of particular vulnerabilities also available as an aggravating factor of a 3B case which is where you counsel invites us to put the case.

So, taking into account all those factors and after considerable deliberation we take the view that this is properly described, as the prosecution invite us to say, as a category 2B case where the sentence start point is six years with a range of sentence from four to nine years. Now, the next step is to consider whether there are any Service factors in this case that would require the Court to adjust that culpability and harm factor finding. I will just read into the record what the Judge Advocate General has to say with regard to sexual offences in the military context. He refers us first of all to the sentence guidelines to which I have already referred that will apply in the Crown Court and makes some general observations. With regard to sexual offences he says:

“Dismissal will be appropriate other than in exceptional cases. Service personnel have little choice where and with whom they serve. They may live in close confines, with only a curtain or, if on operations, nothing separating them from others. They share facilities including ablutions and social spaces. 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.”

And that we take the view is exactly what has happened in this case with the effects of your behaviour leading me to what otherwise would be unnecessary administrative action, people having to be posted and now a young soldier with a whole career ahead of him who decides that he no longer wants to serve in the Armed Forces. The Judge Advocate General also says that:

“Sexual offending involving uninvited access into a victim’s accommodation is particularly serious.”

So, having read those observations although we do not take the view that there are any Service factors in this case that require us to adjust upwards the starting point on the sentence guidelines there are certainly Service factors which aggravate your offending. Those are these. I have referred already to the fact that you were a Corporal in the same platoon, a position of responsibility. He would have looked up to you as a person whom he could trust. You are a lot older than he is, you are 36 he was

18 at the time. The offence was taking place while you were significantly in drink which is always an aggravating feature in the Service context. So, we take the view that those are all reasons to upwardly adjust from the six-year starting point. However, we need to consider whether there is any mitigation in this case. The view that you have taken at trial, which is not to accept what he was saying was true and plead guilty, leaves you in the position that it is impossible for you to express any remorse. We understand that but plainly that is not a factor we can take into account. Are you somebody who we ought to treat as of positive good character or exemplary previous character? It is important because the sentence guideline to which I have already referred says this about good character:

"In dealing with serious sexual offences previous good character and exemplary conduct is different from having no previous convictions. The more serious the offence the less weight should normally be attributed to this factor. Where good character, exemplary conduct has been used to facilitate the offence then mitigation should not be allowed and in fact such conduct may be an aggravating feature."

Well, we are not in that position, you have not used your previous conduct to put yourself in the position to commit this offence. In the context of this offence previous character, exemplary conduct should not normally be given any significant weight and would not normally justify a reduction in what would otherwise be the appropriate sentence. We need to take care in dealing with this issue. In the Crown Court I have got no doubt that an offender like this in the civilian context who was able to pray in aid your military service would be able to put forward that there were elements of positive good character. But in the Court Martial we need to take care with regard to that because that could lead to a Service person receiving a lighter sentence than a civilian would for the same offence and that would plainly be contrary to public policy and the intention of the Judge Advocate General's guideline is that as a starting point Service personnel who commit criminal conduct offences ought to be treated more seriously than their civilian counterparts. We have considered your references with care and Service history and the Chief of the General Staff's commendation. We are not of the view that commendable though your record is, it should properly lead to any reduction in otherwise what would be the appropriate sentence. But that is not to say there is no mitigation in your case.

We have been referred to the psychiatric report of the psychiatrist James Todd. It was not used during your trial. Your psychiatric history detailed in that report was not thought to be relevant to the issue as to your culpability for this offence. But that is not to say the psychiatric history is irrelevant. We have considered the sentence guideline for dealing with offenders who have underlying psychiatric issues. It is accepted that as a result of your service in Iraq and Afghanistan in 2010 and through to 2012 you were exposed to situations that led to you reporting difficulties with regard to your mental

health and you were subsequently diagnosed with post-traumatic stress disorder. Although this was apparently successfully dealt with by appropriate intervention at the time what was not clear was the extent to which you were relying upon alcohol as to some extent a crutch. The issues in 2021 with the grenade range incident also brought those matters into focus. By the time of this offence it is clear now that you were in fact alcohol dependent. A combination of factors has led to a diagnosis of you now of a recurrent depressive disorder and occasional recurrent episodes of post-traumatic stress disorder. You have complied with treatment, you are under some medication now and most significantly you say, and we accept, that you have taken alcohol out of your life. Having read that report carefully there is no suggestion that that underlying condition has contributed to the offence that you have been convicted of. Save for the link with regard to the mental health issue and alcohol misuse it is plain to us your intoxication was a significant factor in this offence. However, your occasionally precarious mental health issues, which are directly attributable to your military service, is a factor that will make any term of imprisonment more difficult for you than somebody without those conditions. And we do take the view that it would be appropriate to reduce what would otherwise be the appropriate sentence to take that into account.

So, taking into account those aggravating Service features, which I have already referred to, which would tend to push the sentence up from that starting point we take the view that it is appropriate also to make a downward adjustment for those mental health issues that I have referred to. The view of this Court is that only a sentence of immediate imprisonment is appropriate for this offence and the sentence that we think appropriate in this case is one of six years' imprisonment. This is not a case where the dangerous provisions of the 2003 Act apply, we are not satisfied that there is a substantial risk of you causing serious harm to anybody by commission of a further specified sexual offence. We do not have a pre-sentence report in this case. We took the view that given that imprisonment was inevitable as a result of your conviction there was little purpose in obtaining a pre-sentence report and there is nothing that we have heard today that would suggest that that initial decision was incorrect.

Just before I do the effect of the sentence it is clearly incompatible for you to remain a member of the Armed Forces now that you are serving a sentence of imprisonment. This offence is so serious that it warrants your dismissal from the Armed Forces which will take place with immediate effect. You will serve two thirds of that prison sentence and then be released with appropriate licence conditions. If you abide by the terms of your licence you will not need to serve the remaining part of the prison sentence. But if you breach the licence conditions you are likely to be returned to prison to serve the remainder of the sentence. The conviction and the sentence that we have imposed upon you means that you must sign on the sex offenders register without limit of time. That is not part of the

punishment of the Court that is an administrative requirement following the conviction and sentence. You need to understand the terms of the register and you will be asked to sign the document before you leave court. If you breach the requirements of the register then that could lead to you appearing before the Court for further criminal offences which you could be sent to prison for up to five years. We have considered making a service compensation order in this case. Having sent you to prison you no longer have any identifiable income. We take the view that we are not satisfied you have got any means to pay an appropriate service compensation order. That is not to say that [name redacted] is not deserving of compensation but he will no doubt be referred to the Criminal Injuries Compensation Board or, if necessary, the Service equivalent.

Now, before I just make sure you understand that sentence and ask you to stand up I am just going to turn to counsel just to see if there is anything that I should have referred to that I have missed or anything that anybody is concerned is technically wrong with regard to the sentence. Mr Peters?

MR PETERS: No thank you, your Honour.

JUDGE ADVOCATE: Mr Faulks?

MR FAULKS: No thank you.

JUDGE ADVOCATE: All right. Do you understand the sentence that the Court intends to pass upon you, Corporal Alexander?

DEFENDANT: Yes, your Honour.

JUDGE ADVOCATE: Yes, all right. Can I ask you to stand up and face the President of the Board please? Mr President would you pass the sentence please?

SENTENCE

PRESIDENT OF THE BOARD: Corporal Alexander, the sentence of this Court Martial is that you serve a sentence of six years' imprisonment. You will be dismissed from His Majesty's Armed Forces