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IN THE COURT MARTIAL

held at

MILITARY COURT CENTRE, BULFORD

on the

15th day of August 2025

in the case of

REX

V

30393816 Air Specialist (Class 1) Harvey Thomas

Royal Air Force Station Brize Norton

JUDGE ADVOCATE

Judge England

Assistant Judge Advocate General

SENTENCING REMARKS

JUDGE ADVOCATE: AS1 Thomas, you can remain seated for now. Having been convicted after trial for one offence of sexual assault it falls now for us to sentence you. The facts of this offence can be very briefly put. The victim in this case, [name redacted], who has given evidence before this Court today as she gave evidence at trial, was a friend of yours when you were both serving at RAF Brize Norton as air stewards. At the time of the offence, she was 23 and you were 21. She left Brize Norton ten months before this offence, but you had remained in some contact through occasional messaging. Whilst both at Brize you were friends and no more. You socialised together as part of a wider group,

you had never been on a date or anything of that nature or socialised on your own in that way. On occasions you may have hugged as friends, but it went no further than that. She had not shown any shred of romantic interest in you.

She had planned a trip away in July 2024 with a male friend who was on a course in Brize Norton and so she intended to travel to Brize to rendezvous with him prior to going off with him on holiday for the trip. She messaged you to ask if you would look after her car because you were still at Brize Norton, you were a friend and you agreed to do so. You met at Brize, there was a hug perhaps and in brief there was an introduction to her male friend, and they set off on their trip. Her return flight put her in Gatwick at 0200 hours. Now, she had messaged a relative to pick her up but that relative declined then to do so, so she messaged you as a friend and you agreed to go and pick her up. She also asked if she could sleep in your room to rest before her onward journey to her mum's and then on to another friend in Lossiemouth in Scotland, on any view a long distance and so she wanted to rest after her travel journey and then a long journey ahead of her. She described it as a massive favour. She asked you because you were a friend, and she trusted that she would be safe in your room.

You did collect her, and you arrived back at your room in the early hours, and it was kind of you to do that. She was comfortable sharing a bed with you because you were a friend and because she trusted you. So far as she was concerned you had never been anything more than friends and on the evidence that we have heard you were never anything more than friends: there was nothing in your relationship to suggest anything sexual was intended or wanted or invited. Nothing was said or done that night to suggest that that position had changed. It is not unusual for Service people to sometimes share beds. Notwithstanding that there was no invitation or indication that any sexual activity was to happen once you were in bed and she was asleep you started to touch her, you touched her sexually, you grabbed her breasts, you touched her thigh, and you were rubbing her vagina over clothing. She did not respond, she gave no indication that this was welcome, there was no communication by you as to what you intended, and you continued despite any indication of consent on her part. In fact, she had frozen. That is not an unusual reaction. She could not believe that you, a friend, was sexually assaulting her and she did not know what to do. Once she had processed it, she turned over so that you did not have access to the front of her and you did at that stage stop touching her and shortly after that she left.

She later messaged you saying that she did not appreciate you touching her and you apologised saying you did not know why you had done it, that you should not have done it and that in our view is the reality of the situation. You did say that you had never had a friend, meaning a female friend, staying over but that is no excuse and indeed from one of your references that does appear not to be the

reality of the situation. But simply having a female stay in your room, even having a female staying in your bed is not on its own any invitation to sexual activity and you did nothing to seek or confirm her consent to you touching her; you just went ahead. We are sure that a degree of naivety and perhaps immaturity played some part in this, but we are equally sure that your desire for sexual activity with [name redacted] guided your actions as well.

We have heard [name redacted] read out her victim personal statement. It is clear to us as it must be to you the impact that this offence has had on her. She has been diagnosed with PTSD as a result of this incident, she has received and is still receiving treatment and counselling. She is currently unable to work, she is still significantly affected by the trauma of what you did. Potentially she will have to give up the career that she loved and that she still loves because of what you did. We hope that she is in time able to rebuild the relationships that have suffered as a result of this offence and as a result of her not being able to talk about it while it was investigated and whilst she was waiting for the trial to come around. We hope she will come to accept in time that she is not in any way to blame for what happened to her that night. You are fully to blame. We also hope that in time she will be able to trust male friends and colleagues again and, if she wishes to do so and she feels able to do so, that she will be able to resume her career in some capacity.

As to you, you are 22 years old, you were 21 at the time, and you have almost three years' service. Up until this offence you were a man of good character which you have now lost. We have listened very carefully to everything that has been said on your behalf by Mr Johashen. We have also read with care all of the character references provided. Professionally you are very well thought of. You are trusted, you are relied on, you are willing to do more than required, to go the extra mile to be a useful person. The professional referees also talk about your personal qualities and praise you for the way you interact with others. Those that know you personally commend you to us as a personable, trustworthy young man who has made a dreadful mistake. A mistake it may have been, but it was also a criminal offence.

We have read with care the probation officer's report. We note that in the professional assessment of the experienced probation officer whilst in your messages with [name redacted] you took responsibility for the offence you do not now do so. You recognise that the offence has had an impact on your victim, we note that you pose a medium risk of re-conviction of sexual offences, and you pose a medium risk of causing serious harm were you to go on to commit a further sexual offence. We note that in the probation officer's view the risk you pose can be managed in the community. We note the recommendation in the report. We are not bound by the recommend or the views of the probation officer. We must reach our own view.

We have had regard to some sentencing guidelines, the offence specific guideline, the imposition guideline and the Judge Advocate General's sentencing guidelines issued specifically for sentencing within this jurisdiction. In the Judge Advocate General's sentencing guideline, it states that dismissal is almost inevitable for any offence of sexual assault, and we are told by Mr Johashen that you accept that that is the reality of the situation. In terms of dismissal the bond of friendship and trust that form between people that train together and work together in the Services are often very strong. It is all the more devastating than when those bonds are broken by an offence such as this. Service people do often work closely together, they live closely together often in very close confines to each other whether they want to or not. It is essential that every Service person is able to trust those around them to treat them with respect and not to commit offences against them. You have lost that trust and your position in the services is untenable. Those that commit sexual assaults on their colleagues are almost inevitably dismissed and we find this offence so serious that you will be dismissed from HM Forces.

As with any offence, be it Service or civilian, a Court has to consider your culpability and the harm caused by others. Dealing first with harm one of the harm factors is whether the victim was particularly vulnerable. We find that she was vulnerable given that she was asleep when you started to touch her. As such when someone is asleep, they have no means to stop you doing it because they are asleep, they do not know that it is happening. Vulnerability is demonstrated also by the fact that she does not know what you did before she woke up and she will never know that. Any check by you to check that what you were doing was okay would have prevented that, but you did not do so. So, we do find that she was vulnerable. However, we also find that this was a consensual arrangement to share this bed, she knew that there would be someone else in the bed with her. This is not a situation where someone has crept into someone else's room waiting for them to fall perhaps into a drunken sleep and then taken advantage of that to then get into their bed and sexually touch them. If that were the case, we would be finding particular vulnerability in this case but although we find that the victim was vulnerable, in accordance with the particular meaning ascribed to particular vulnerability in this case, we do not find that that is present here.

In terms of psychological harm, we do find that [name redacted] has suffered significant psychological harm but we are persuaded by Mr Johashen that it does not amount to severe harm within the meaning of the guideline. That is not intended to minimise the harm caused to [name redacted], she has suffered significantly, but there is a particular meaning to term severe harm within the guideline, and this falls just short of that threshold. We do however find that there are some Service factors that increase harm. Those are damage to operational effectiveness, in particular that [name redacted] has

been unable to fulfil her duties and that is solely down to you, that is not down to her. We find there is damage to the reputation of the Armed Forces and damage to morale, and both of those later factors lie in the nature of your offending.

The Services have put some work in to educate and train Service people as to the standards expected of them in relation to unwanted sexual behaviour. This clearly shows that there is still work to do. And the fact that Service people commit offences against their colleagues inevitably damages the Service reputation and it damages morale not only in respect of female Service personnel but against other Service personnel, male personnel, who manage to uphold the standards expected and have a right to expect others to do so and so are disappointed and disillusioned when others fail to do so. Such offences when people hear that there has been yet another sexual assault within the Services of one Service person on another can deter others from joining the Services or can mean that those who are serving question whether they want to continue in Service. We therefore do categorise this as category 2 harm for those reasons.

In respect of culpability we agree with both prosecution and defence that there are no category A factors present, there are no Service factors present to increase culpability, so we find it to be culpability B. As such a 2B offence provides a category start point of one year in prison within a range of a high level community order to two years in prison. We must consider aggravating and mitigating factors. I have mentioned already the vulnerability of your victim. We have not taken that into account as being particularly vulnerable, but we do consider it to be an aggravating factor. She was asleep when you started to touch her and that ties in with the breach of trust that one Service person needs to have in another. And although it was not a sustained incident which would increase the categorisation neither was it a single fleeting touch on one single body part. I have already described where you touched her, and it was not a single incident. It was over clothing, but we find the multiple levels of touching to be an aggravating factor. Those aggravating factors justify an upward adjustment from the start point of a year in prison.

But there are mitigating factors. You have no previous convictions, you have no cautions, you have a clean Service disciplinary record in your relatively short Service career. You were of good character, you have good professional and personal references, references from people who know you far better than this Court knows you and we take those into account. It is a mitigating factor that you were 21 and had a degree of lack of maturity. Now, some of your character references in a professional capacity put you as high maturity for your age but we must also take into account emotional maturity; we note that you were only 21 at the time. We note that there is well respected research that suggest that young people's brains are still maturing particularly in relation to impulsivity and in relation to

not thinking through the consequences of their actions and we take into account the probation officer's assessment that a lack of maturity may have been a factor in your offending. We do find some degree of remorse. We find that you demonstrated your remorse through your messages the next day, but we do find that that did not carry through to your plea and it did not carry through to your engagement with the probation officer. From the pre-sentence report it does still seem that you have yet to fully take responsibility for what you had done casting this as just a mistake or a misjudgement rather than accepting that you committed an offence. Those mitigating factors do justify a downward adjustment to the category starting point.

Taking into account both aggravating and mitigating factors and reflecting our assessment about harm we consider that those factors balance themselves out and so that still leaves us at one year in prison. We are of the view that somebody who sexually assaults a woman as she sleeps clearly crosses the custody threshold for imprisonment. In relation to the sentence though we have a number of options. We could order you to serve it immediately. It is a relatively short sentence, you would only serve a few months, you would then be released on licence for up to a year. You would not receive any rehabilitation in prison given the length of sentence or the proportion of the sentence that you will serve. We also take into account the challenges facing the prison system in terms of being close to capacity and that that may make short sentences serving in those conditions a little more onerous than otherwise. We could impose a sentence of detention instead of imprisonment. That is not a sentence that is available in the civilian courts. Such a sentence would be uplifted to the region of about 16 months' detention of which you would serve two thirds. That is as identified in the Judge Advocate General's sentencing guidelines. Rehabilitation can take place in MCTC. MCTC indeed strives to provide as much rehabilitation and support as it can within the sentence imposed. You would not however be subject to any licence or supervision at the end of a sentence in MCTC.

Given the length of the sentence that we have reached of one year imprisonment the guideline requires us to consider whether or not we could instead sentence you to a service community order instead of an immediate sentence or imprisonment or indeed whether or not the sentence of imprisonment can be suspended. The question for us is whether a service community order or a suspended sentence order, a sentence in the community could provide sufficient restriction on your liberty by way of punishment while also addressing rehabilitation could prevent further offending and in doing so to protect the public. It is this aspect of the sentence that has taken us some considerable time to reach a decision on. There are many that would say that only an immediate sentence of imprisonment, only a sentence that puts you behind bars today would be sufficient to meet the justice of an offence such as this. We must take into account that everything that we know about you and about this case. We must take into account the view of the report writer in particular that your risk

can be managed in the community. There is a realistic prospect of rehabilitation. We note that you have prospects in employment and have provided some proof of that. We must also take into account the nature of the requirements that we could impose upon you in order to achieve the principles of sentence of punishment, rehabilitation and protection of the public.

In our view this is a case in which we can suspend the sentence of imprisonment. This is not to be taken as a lenient sentence in any way. What a sentence of suspended imprisonment means is that this offence warrants you going to prison but for the reasons stated we are of the view that the interests of society, not your interests necessarily but the interests of society, are best served by suspending it on onerous terms. The 12 months will be suspended for two years. The requirements are as follows. Up to 35 rehabilitation activity requirement days to include the programme stated in the pre-sentence report, 240 hours of unpaid work to be completed within 12 months and a curfew for 180 days seven days a week 8.00pm to 6.00am with a monitoring requirement. You will be contacted by the monitoring company, you must make yourself available to have the tag fitted. If you do not do so you will be in breach of the order. If you interfere with the tag in any way that affects its operation you will be in breach of the order. If you breach the curfew, you will be in breach of the order.

If in the next two years you commit any offence whether or not it is of the same type for which we are sentencing you today, you will be brought to the Crown Court, and it is likely that this sentence will be brought into operation either in full or in part. In other words, that you will in all likelihood be sent to prison. You must meet with the officers supervising the requirements of the order, both the RAR days and the unpaid work. You must meet when directed, you must attend and co-operate fully with any activities or unpaid work that is arranged for you. If you fail to comply with these requirements, you will be in breach of the order. Any breach of the order means that you will be put back before the Crown Court, you will be liable to serve the sentence either in full or in part.

I certify that as you have been convicted of a sexual offence, you must for a period of ten years from today's date keep the police informed at all times of your personal particulars, the address at which you are living and any alteration in the name you are using and numerous other requirements that will be on a form that will be provided to you before you leave this court. You must not leave this building without that form, you must not leave this building without signing the paperwork in relation to your community order. If you breach the notification requirements, they have variously been referred to as the notification requirements or the sex offenders register, if you breach those requirements, you can be sentenced for up to five years in prison. It is an onerous requirement and

the five years' imprisonment punishment makes that clear. You must make sure that you do what you need to do in order to not be in breach.

The offence of which you have been convicted is one which will or may make you subject to barring from working with children or others. You will be told of the restrictions under the Safeguarding of Vulnerable Groups Act by the Disclosure and Barring Service. That is not a sentence of this Court it is a consequence of the offence for which you have been convicted.

In terms of compensation, we do not make any order for compensation. That is not because you do not have the means to pay and it certainly is not because [name redacted] should not receive compensation, she should receive compensation. But there is still some path to go to see the total effect of these offences on [name redacted] and evidence will need to be provided in order for the full impact to be properly assessed so that she gets the correct amount of compensation. We would simply be guessing and the figures that we would come to would not in our view in any way provide an appropriate amount to her without full information as to what she is entitled to receive. There are other avenues available to her for claiming compensation which we would encourage her to follow and which I am sure the prosecutor can inform her about after these proceedings.

Now, Mr Johashen, we made that curfew order without it being able to be recommended but I canvassed with you there did not appear to be any difficulty and so we have gone ahead to make it. If there any difficulties it may be that any difficulties could be addressed under the 56 day rule if necessary, but it would have to be done within 56 days.

MR JOHASHEN: Yes, of course.

JUDGE ADVOCATE: Anything that so far you are concerned we have not dealt with or have not explained properly?

MR JOHASHEN: No, thank you very much.

JUDGE ADVOCATE: Major Harris, anything from you?

MAJ HARRIS: No thank you, your Honour.

JUDGE ADVOCATE: Mr President, we discussed what you need to say to the defendant. I omitted to say that you also need to announce the dismissal from HM Forces as well. If you could do that when

you read out the sentence. Will you stand up please? The President will now announce the sentence of the Court.

SENTENCE

PRESIDENT OF THE BOARD: 30393816 Air Specialist 1 Harvey Thomas, you are sentenced for sexual assault to a suspended sentence order of 12 months' imprisonment suspended for two years on the terms already outlined and you are to be dismissed from Service.