

**UNITED STATES NAVY-MARINE CORPS  
COURT OF CRIMINAL APPEALS  
WASHINGTON, D.C.**

**Before  
E.E. GEISER, J.E. STOLASZ, V.S. COUCH  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**TERRENCE W. HUGHES  
STAFF SERGEANT (E-6), U.S. MARINE CORPS**

**NMCCA 200602336  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 9 June 2006.  
**Military Judge:** Col Steven Day, USMC.  
**Convening Authority:** Commanding General, 2d Marine  
Division, Camp Lejeune, NC.  
**Staff Judge Advocate's Recommendation:** Col M.C. Jordan,  
USMC.  
**For Appellant:** CDR Bree Ermentrout, JAGC, USN.  
**For Appellee:** LT Derek Butler, JAGC, USN.

**11 October 2007**

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**OPINION OF THE COURT**  
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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

STOLASZ, Judge:

A military judge, sitting as a general court-martial, convicted the appellant, consistent with his pleas, of cruelty and maltreatment, assault with a dangerous weapon, assault consummated by a battery, and reckless endangerment, in violation of Articles 93, 128, and 134, Uniform Code of Military Justice 10 U.S.C. §§ 893, 928, and 934. The appellant was sentenced to confinement for 15 months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

We have examined the record of trial, the appellant's six assignments of error,<sup>1</sup> and the Government's response. We conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

### **Improvident Pleas**

The appellant asserts that his guilty pleas to Specifications 3 and 4 of Charge I (assault with a dangerous weapon/assault consummated by a battery) and Specification 2 of Charge III (cruelty and maltreatment) are improvident. We disagree.

In order to reject a guilty plea on appellate review, there must be a substantial basis in law and fact to question the plea. *United States v. Irwin*, 60 M.J. 23, 24 (C.A.A.F. 2004)(citing *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002)). "A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion." *United States v. Shaw*, 64 M.J. 460, 462 (C.A.A.F. 2007)(quoting *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996)).

#### **Specification 3 of Charge I (Assault With a Dangerous Weapon)**

This specification alleges an offer type assault. Such an assault requires "an unlawful demonstration of violence, either by an intentional or by a culpably negligent act or omission, which creates in the mind of another a reasonable apprehension of receiving immediate bodily harm. MANUAL FOR COURTS-MARTIAL, UNITED

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<sup>1</sup> I. APPELLANT'S PLEAS OF GUILTY TO CHARGE I, SPECIFICATION THREE, ASSAULT, IS IMPROVIDENT BECAUSE THE RECORD DOES NOT ESTABLISH THAT APPELLANT EITHER MADE A DEMONSTRATION OF UNLAWFUL VIOLENCE OR CREATED AN APPREHENSION IN THE MINDS OF LCPL DOBBS AND LCPL GROVES.

II. APPELLANT'S PLEA OF GUILTY TO CHARGE I, SPECIFICATION FOUR, ASSAULT, IS IMPROVIDENT BECAUSE THE RECORD DOES NOT ESTABLISH APPELLANT'S CONDUCT WAS "INTENTIONAL OR CULPABLY NEGLIGENT."

III. APPELLANT'S PLEA OF GUILTY TO CHARGE III, SPECIFICATION TWO, IS IMPROVIDENT BECAUSE THE RECORD DOES NOT ESTABLISH THAT APPELLANT'S CONDUCT AMOUNTED TO "CRUELTY, OPPRESSION, OR MALTREATMENT," UNDER ARTICLE 93 OF THE UNIFORM CODE OF MILITARY JUSTICE.

IV. AS UNSUSPENDED BAD-CONDUCT DISCHARGE IS NOT APPROPRIATE FOR A HIGHLY DECORATED APPELLANT DIAGNOSED WITH POST TRAUMATIC [SIC] STRESS DISORDER.

V. THE CONVENING AUTHORITY ERRED IN APPROVING THE SUSPENSION OF CONFINEMENT EFFECTIVE ON THE DATE OF HIS ACTION RATHER THAN COMPLYING WITH THE DECISION OF THE MILITARY JUDGE.

VI. THE CONVENING AUTHORITY ERRED IN APPROVING WAIVER OF AUTOMATIC FORFEITURES.

STATES (2005 ed.) Part IV, ¶ 54(c)1(b)(ii). The appellant asserts that he told the military judge that his action in pulling the weapon was "reflexive" and did not, therefore, constitute an intentional or culpably negligent act. Record at 67.

During the providence inquiry, the appellant testified that he directed Lance Corporals (LCpl) Dobbs and Grooves fill the batteries on their light armored vehicle with acid in anticipation of an upcoming mission. The two men subsequently obtained additional information which led them to question whether they should/could carry out the order. The men roused the appellant from sleep to clarify matters. The appellant, while in a self-described half slumber, testified that he pulled his unloaded .9 millimeter weapon from inside his sleeping bag, pointed it at the two men, and ordered them to finish the task he'd given them. Record at 64.

While the record does reflect the appellant's statement that his action was initially "reflexive," it also contains his statement that at a point during the encounter, he became aware he was pointing the weapon at the two men and continued to do so. Record 67. The appellant also asserts that he did not at the time perceive the two men as apprehensive at having a weapon pointed at them but acknowledges that the men's' testimony at the Article 32, UCMJ, hearing convinced him that they were, in fact, apprehensive of receiving immediate bodily harm at the time. We find, therefore, that there is no basis in law or fact to question the appellant's guilty plea to this specification and that the military judge did not abuse his discretion in accepting it.

#### **Specification 4 of Charge I (Assault Consummated By a Battery)**

Assault consummated by a battery requires that the appellant did bodily harm to someone and that the harm was done with unlawful force or violence. MCM, Part IV, ¶ 54(b)(2). During his providence inquiry, the appellant testified that he intentionally kicked LCpl Ronan in the chest driving the man back approximately half a foot. Record at 68-69. The appellant stated that he did so because LCpl Ronan forgot to bring his weapon as the unit was about to pull out on a mission. *Id.*

The appellant's "in the heat of the moment" argument does not negate the fact that he acknowledged fully intending to kick LCpl Ronan in the chest. The appellant's assertion that his providence responses revealed that the kick was "unintentional" is wholly without merit. Appellant's Brief and Assignments of Error of 12 Jan 2007 at 8. Kicking a Marine in the chest was not a lawful disciplinary option under the circumstances. We find, therefore, that there is no basis in law or fact to question the appellant's guilty plea to this specification and that the military judge did not abuse his discretion in accepting it.

### **Specification 3 of Charge III (Cruelty and Maltreatment)**

Cruelty and maltreatment requires that the appellant was cruel toward, oppressed, or maltreated a person subject to his orders. MCM, Part IV, ¶ 17(b). The essence of the offense of maltreatment is an abuse of authority. *United States v. Carson*, 57 M.J. 410, 415 (C.A.A.F. 2002). It is only necessary to show, as measured from an objective standpoint in light of the totality of the circumstances, that the appellant's actions reasonably could have caused physical or mental harm or suffering. *Id.*

In the instant case, the appellant testified that he and his unit were conducting a night raid with the vehicle's main gun pointed towards the objective. Scouts were tasked to protect the unit's rear. The appellant stated that he noticed an unsecured weapon on the scout hatch on the vehicle next to him. He grabbed the weapon by the butt stock. As LCpl Hampton was emerging from the vehicle, the appellant tapped the man on the helmet with the weapon and then pointed it in LCpl Hampton's face, asking "how [he liked] having [his] weapon pointed in [his] face." Record at 69, 70, 71.

During subsequent questioning by the military judge, the appellant acknowledged that there were better ways to handle the teaching point he felt needed to be made and gave examples of less threatening alternatives. The appellant acknowledged that LCpl Hampton felt his life was in danger and that instilling such fear in a subordinate constituted cruel treatment. We find, therefore, that there is no basis in law or fact to question the appellant's guilty plea to this specification and that the military judge did not abuse his discretion in accepting it.

### **Sentence Appropriateness**

The appellant asserts that an unsuspended bad-conduct discharge is not an appropriate sentence for someone with his character of service who has been diagnosed with post-traumatic stress disorder (PTSD). Appellant's Brief at 11. When considering sentence appropriateness we give "individualized consideration to the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 181 (C.M.A. 1959)); *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

While we are mindful of the appellant's superior record, combat service, and combat-related illness, we are also compelled to consider that the various specifications reflect a non-commissioned officer who, over an extended period of time, repeatedly vented his personal frustration and anger in abusive ways towards those Marines entrusted to his leadership and care. After reviewing the entire record we find that this sentence is

appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005).

### Conclusion

The appellant's remaining assignments of error are without merit.<sup>2</sup> The approved findings and the sentence are affirmed.

Senior Judge GEISER and Judge COUCH concur.

For the Court

R.H. TROIDL  
Clerk of Court

Judge STOLASZ participated in the decision of this case prior to detaching from the court.

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<sup>2</sup> Since the appellant was not required to serve confinement in excess of that contemplated by the pretrial agreement and is no longer exposed to that portion of the sentence to confinement that should have been suspended, we conclude that the appellant has received the benefit of his bargain notwithstanding the scrivener's error in the convening authority action. While we do not condone the convening authority's error, remedial action is not required. *United States v. Caver*, 41 M.J. 556, 565 (N.M.Ct.Crim.App. 1994).