

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.**

BEFORE

D.A. WAGNER

K.K. THOMPSON

E.B. STONE

UNITED STATES

v.

**Joshua D. ODEA
Private (E-1), U. S. Marine Corps**

NMCCA 200600912

Decided 26 April 2007

Sentence adjudged 15 February 2006. Military Judge: M.J. Griffith. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, 10th Marine Regiment, 2d Marine Division, Camp Lejeune, NC.

CAPT MARK W. PEDERSEN, JAGC, USN, Appellate Defense Counsel
LT TYQUILI BOOKER, JAGC, USN, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

THOMPSON, Senior Judge:

Pursuant to his pleas, the appellant was convicted by a military judge, sitting as a special court-martial, of two specifications of wrongful use of a controlled substance, in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. He was sentenced to 60 days confinement, forfeiture of \$849.00 pay per month for two months, and a bad-conduct discharge.

We have examined the record of trial, the appellant's two assignments of error and the Government's response. We conclude that the findings and 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.

Authentication of the Record

In his first assignment of error, the appellant asks this court to return the record of trial to the convening authority for corrective action because the record was not properly authenticated, rendering the staff judge advocate's

recommendation (SJAR) and the convening authority's (CA) action invalid. The underlying basis for the assignment of error has merit.

The appellant's court-martial was called to order on 13 December 2005. The presiding military judge was Major A.F. Williams, U.S. Marine Corps (USMC). The trial counsel for this session was First Lieutenant (1Lt) A. M. Strzelczyk, USMC. During that trial session, the appellant was advised of his counsel and forum rights and was arraigned. The appellant reserved his selection of forum and reserved motions and pleas. The exchange lasted ten minutes and is recorded on the first ten pages of the record of trial. The appellant's court-martial reconvened on 6 and 15 February 2006, with Major M.J. Griffith, USMC, presiding as the military judge. For these sessions, Captain K.S. Kraics, USMC, replaced 1Lt Strzelczyk as trial counsel. At the 6 February trial session to hear motions, Major Griffith re-advised the appellant of his counsel and forum rights. At the 15 February trial session, Major Griffith again advised the appellant of his counsel and forum rights, and the appellant made his selection. Major Griffith received the appellant's pleas.

RULES FOR COURTS-MARTIAL 1104(a)(2)(a), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2005 ed.) provides in part that, "[i]f more than one military judge presided over the proceedings, each military judge shall authenticate the record of the proceedings over which that military judge presided" Following the conclusion of the trial, and at the time this record was docketed with this court, the first ten pages of the trial session presided over by Major Williams was not authenticated by the military judge or the trial counsel. In response to an order by this court, the Government attached to the record of trial a substitute authentication executed by 1Lt Strzelczyk, dated almost one year after the sentence had been adjudged, due to the retirement of Major Williams. See R.C.M. 1104(a)(2)(B).

Although the record is now authenticated, the appellant contends that the original SJAR and CA's action are invalid, since they are based upon an unauthenticated record of trial. Assuming, *arguendo*, that the appellant's contention is correct, the error in the authentication methodology here does not necessitate the return of the record of trial to the convening authority. See *United States v. Merz*, 50 M.J. 850, 854 (N.M.Ct.Crim.App. 1999). Instead, courts have required some showing of prejudice. *Id.* at 854. Under the facts of this case, any error in the authentication process of the first ten pages of this record is harmless. The matters addressed in the brief initial session of the appellant's court-martial were repeated by the succeeding military judge in the following sessions of the court-martial.

Furthermore, the appellant's trial defense counsel certified that he examined the record in the proceedings when the record of

trial was made available to him by the trial counsel in accordance with R.C.M. 1103(i)(1)(B). There was no claim that the record of trial was incomplete or inaccurate.¹ See *United States v. Galaviz*, 46 M.J. 548, 550 (N.M.Ct.Crim.App. 1997). Contrary to the appellant's assertion, this court has had a full opportunity for meaningful review of the appellant's case. We take no further action concerning this issue.

Sentence Appropriateness

In his second assignment of error, the appellant contends that his sentence is inappropriately severe. He particularly focuses upon the bad-conduct discharge. In support of his argument, he cites his frustration in trying to obtain a humanitarian transfer to be with his mother, who was suffering from terminal lung cancer. His father had died of cancer eight years before. The processing of his request was delayed and, while at home visiting his mother, the appellant smoked marijuana while he was riding around in a car with friends. Later, because he was tired before driving back to his base, he obtained cocaine from one of those friends which he used in order to stay awake. He claimed that his use of the drugs was an effort to escape the reality of his mother's health problems and other issues.

Regarding the appellant's character, the appellant focuses on his athletic participation and aptitude test scores, as well as his performance in boot camp and MOS school, and as a cannon operator during several field exercises. However, he fails to mention that, less than two months after these offenses were referred to a court-martial, and prior to the instant court-martial, he again used marijuana, and received nonjudicial punishment as a result.

After reviewing the entire record, we find that the sentence, including a bad-conduct discharge, is entirely appropriate for this offender and his offenses and decline to grant relief. See *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005); *United States v. Healy*, 26 M.J. 394 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982).

¹ Defense counsel was served with the staff judge advocate's recommendation on 21 March 2006. No matters were submitted pursuant to R.C.M. 1105 or 1106 prior to the convening authority's action dated 27 April 2006.

Conclusion

Accordingly, we affirm the findings and sentence as approved by the convening authority.

Chief Judge WAGNER and Judge STONE concur.

For the Court

R.H. TROIDL
Clerk of Court