

**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.

**Jamu K. SANDERS
Private (E-1), U.S. Marine Corps**

NMCCA 200400465

Decided 30 April 2007

Sentence adjudged 20 May 2003. Military Judge: W.J. Payne. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, 2d FSSG (REAR), U.S. Marine Forces, Atlantic, Camp Lejeune, NC.

CDR M.J. WENTWORTH, JAGC, USN, Appellate Defense Counsel
LT J.L. GOLDSMITH, JAGC, USN, Appellate Defense Counsel
Maj KEVIN C. HARRIS, USMC, Appellate Government Counsel
LT JESSICA M. HUDSON, JAGC, USN, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

THOMPSON, Senior Judge:

A military judge, sitting as a general court-martial, convicted the appellant, pursuant to his pleas, of reckless driving, larceny, assault consummated by a battery, and disorderly conduct, in violation of Articles 111, 121, 128, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 911, 921, 928, and 934. The appellant was sentenced to a bad-conduct discharge. The convening authority approved the sentence as adjudged. The pre-trial agreement had no effect on the sentence.

The appellant initially raised three assignments of error (AOE),¹ and this court, finding merit in the third allegation

¹ The appellant's first brief assigned three errors:

- I. THE APPELLANT'S SENTENCE TO AN UNSUSPENDED BAD-CONDUCT DISCHARGE IS INAPPROPRIATELY SEVERE FOR THIS OFFENSE AND THIS OFFENDER.

concerning the staff judge advocate's recommendation (SJAR), remanded this case for the issuance of a new SJAR.² After the record of trial was docketed with this court a second time, the appellant filed two additional assignments of error.³ Finding merit in the fourth AOE alleging ineffective assistance of counsel, this court once again remanded the case for new post-trial processing. The case having been docketed a third time, we now address the remaining assignments of error.

Sentence Appropriateness

The appellant contends that his sentence of a bad-conduct discharge is inappropriately severe. We disagree. The appellant, with three other passengers in his vehicle, raced on a two-lane public road with several other cars at a high rate of speed, heedless of the safety of his passengers or occupants of the other cars. He confronted an individual who had passed him and, grabbing him by his shirt, forcefully dragged him out of his vehicle, screaming and cursing at him in a city parking lot in full view of passers-by. Furthermore, the appellant then obtained this individual's bank card without his permission and used it to pay for gasoline for his vehicle. The evidence adduced at trial shows the appellant voluntarily and willingly participated in serious criminal conduct which led to participation in the assault of the victim by his companions.

Accordingly, after reviewing the entire record, we find that the sentence, consisting of a bad-conduct discharge, is entirely appropriate for this offender and his offenses. 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). Therefore, the appellant's first assignment of error is without merit.

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- II. THE APPELLANT'S BAD-CONDUCT DISCHARGE IS DISPARATELY SEVERE COMPARED WITH THE DISPOSITION OF OTHER CLOSELY-RELATED CASES.
 - III. THE STAFF JUDGE ADVOCATE'S RECOMMENDATION IS DEFECTIVE IN THAT IT FAILS TO ACCURATELY SUMMARIZE THE APPELLANT'S CHARACTERIZATION OF SERVICE, AWARDS, AND DECORATIONS AND ADVISES THE CONVENING AUTHORITY.

² NMCCA Opinion decided 12 May 2005.

³ At second docketing with this court, the appellant filed a supplemental brief asserting two additional assignments of error:

- IV. THE APPELLANT'S RIGHT TO SUBMIT ADDITIONAL MATTERS PURSUANT TO R.C.M. 1106 WAS MATERIALLY PREJUDICED BY INEFFECTIVE ASSISTANCE OF COUNSEL.
- V. THE APPELLANT'S SUBSTANTIAL RIGHT TO SPEEDY POST-TRIAL REVIEW WAS MATERIALLY PREJUDICED BY THE UNREASONABLE DELAY IN POST-TRIAL PROCESSING.

Sentence Disparity

The appellant's second assignment of error asserts that the approved sentence in his case is highly disparate in comparison with the approved sentences of two companion cases.⁴ We disagree.

The Government has not contested the appellant's assertion that the companion cases he cites are closely related.⁵ Assuming, *arguendo*, that the cited cases are closely related, the appellant has failed to meet his burden of demonstrating that the cases are highly disparate. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999). Separate and apart from the offenses for which the appellant was found guilty, he was clearly the instigator of the entire unsavory episode.

In his brief, the appellant infers that, due to his inferior rank, his companions had a duty to deter him from acting in the way he did. We find this argument disingenuous, since the appellant's rank of Private (pay grade E-1) at the time of the offenses was a result of a reduction in rank awarded as a result of his summary court-martial. Furthermore, the appellant had several years of prior military service and had been employed for several years as a law enforcement officer in the state of North Carolina. Apparently, neither his military and civilian experience nor his recent summary court-martial served as a constraint in his decision to participate in this incident.

The significant differences between the gravity of these offenses are an appropriate basis for a determination that the appellant's charges should be referred to a special court-martial, while the lesser charges against LCpl Gamble and LCpl Mitchell were referred to summary courts-martial. *See United States v. Noble*, 50 M.J. 293, 295 (C.A.A.F. 1999). Accordingly, we find that the respective forums are relatively uniform considering the respective offenses and involvement of the individuals.

Finally, even if the appellant had satisfied his burden of establishing that these cases are highly disparate, we believe that the Government has demonstrated a rational basis for the disparity. *Lacy*, 50 M.J. at 288. We again note that, but for

⁴ Lance Corporal (LCpl) Gamble and LCpl Mitchell were convicted at summary courts-martial convened by Commanding Officer, 2d Force Service Support Group (Rear), of breach of peace and assault (three specifications), and larceny, assault and disorderly conduct, respectively.

⁵ Government's Brief of 11 Mar 2005 at 4-7.

the actions of the appellant in instigating this entire episode and carrying his companions along in his efforts, neither the appellant nor his companions would carry the convictions they received as a result. This assignment of error is without merit.

Post-Trial Delay

In his fifth assignment of error, the appellant asserts that he was denied speedy post-trial review of his court-martial because a total of 1301 days elapsed from the date of sentencing to the third time this case was docketed with this court. Our superior court has held that we may dispose of a due process issue by "assuming error and proceeding directly to the conclusion that any error was harmless." *United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). In this case, we find no possibility of prejudice and conclude that any error was harmless beyond a reasonable doubt. We also do not find that the delay affects the findings and sentence that should be approved in this case. *United States v. Brown*, 62 M.J. 602 (N.M.Ct.Crim. App. 2005)(en banc).

After considering the record of trial, the appellant's brief and sole assignment of error, 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.

Conclusion

Accordingly, the findings and sentence, as approved by the convening authority, are affirmed.

Chief Judge WAGNER and Judge STONE concur.

For the Court

R.H. TROIDL
Clerk of Court