

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

**Before  
J.A. MAKSYM, L.T. BOOKER, R.E. BEAL  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**JASON A. DRAKE  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201000005  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 14 February 2009.

**Military Judge:** LtCol David S. Oliver, USMC.

**Convening Authority:** Commanding General, III Marine Expeditionary Force, Okinawa, Japan.

**Staff Judge Advocate's Recommendation:** LtCol D.J. Bligh, USMC.

**For Appellant:** Capt Jeffrey R. Liebenguth, USMC.

**For Appellee:** CDR Kimberly D. Hinson, JAGC, USN; LT Brian C. Burgtorf, JAGC, USN.

**22 July 2010**

-----  
**OPINION OF THE COURT**  
-----

**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant consistent with his pleas, of one specification of violating a lawful order, two specifications of assault consummated by a battery, one specification of kidnapping, one specification of communicating a threat, and one specification of carrying a concealed weapon, in violation of Articles 92, 128, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 928, and 934. The appellant was sentenced to 42 months confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence adjudged and, except for the bad-conduct discharge, ordered the

sentence executed. In addition to 281 days of pretrial confinement credit for time served and 183 days of judicially ordered pretrial confinement credit, the convening authority also granted an additional 366 days of confinement credit, for a total of 830 days of confinement credit.

On appeal, the appellant avers that his sentence is inappropriately severe.

After examining the record of trial, the 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.

### **Sentence Appropriateness**

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). This requires "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and 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, 180-81 (C.M.A. 1959)).

In this case, the appellant faced a jurisdictional maximum of confinement for life without possibility of parole, a dishonorable discharge, total forfeitures, and reduction to the lowest enlisted pay grade.

The unfortunate circumstances surrounding the offenses involved a turbulent relationship between the appellant and his wife with their young son caught between them. After informing the appellant in April 2008 that she wanted to leave Okinawa and move to Las Vegas, and that she intended to take their son with her, the appellant's wife attempted to retrieve their son's passport and other paperwork from the appellant. During the ensuing argument, the appellant grabbed his wife's throat and squeezed, causing bruising to her neck. A Military Protective Order was issued against the appellant as a result.

Thereafter, on or about 8 May 2008, the appellant then tricked his wife into meeting him, entered her car without her consent, and drove around for about three hours with her trapped in the car. During that ordeal, the appellant brandished a three- to four-inch folding knife he carried in violation of base orders and Japanese law. He threatened to kill his wife and to hurt himself, but finally released her after she promised not to report him to the authorities.

During sentencing, evidence of the appellant's character was presented, whereby six witnesses, a verbal unsworn statement, and

documentary evidence painted a picture of a dedicated Marine, a tormented husband, and a loving father wholly concerned with the well-being of his young son.

After reviewing the entire record--given the nature of the offenses and the positive and negative aspects regarding the appellant--we find that the sentence awarded by the military judge after deliberations is, as a whole, appropriate. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. The convening authority subsequently awarded the appellant an additional 366 days of confinement credit in his action. Sentence relief at this point would amount to additional clemency, a matter squarely reserved for the convening authority. *Healy*, 26 M.J. at 396.

### **Conclusion**

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

For the Court

R.H. TROIDL  
Clerk of Court