

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

**Before
C.L. REISMEIER, E.E. GEISER, J.K. CARBERRY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**HAROLD B. HAMMOCK, JR.
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 200700938
GENERAL COURT-MARTIAL**

Sentence Adjudged: 21 February 2007.
Military Judge: LtCol Jeffrey G. Meeks, USMC.
Convening Authority: Commanding General, Marine Corps
Recruit Depot/Western Recruiting Region, San Diego, CA.
Staff Judge Advocate's Recommendation: Col B.A. White, USMC
(11 Sep 2007). **Addenda:** Col B.A. White, USMC (13 Nov
2007); Col S.C. Smith, USMC (11 Aug 2008). **Staff Judge
Advocate's Recommendation:** Maj S.E. Jackson, USMC (12 Aug
2009). **Addendum:** Col M.B. Richardson, USMC (15 Sep 2009).
For Appellant: Maj B.L. Jackson, USMC; Maj Kirk Sripinyo,
USMC.
For Appellee: CDR Kimberly D. Hinson, JAGC, USN; Capt Mark
Balfantz, USMC; Capt Geoffrey S. Shows, USMC.

23 March 2010

OPINION OF THE COURT

**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICES AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A general court-martial composed of officer members convicted the appellant, contrary to his pleas, of unauthorized absence, eight specifications of rape of a child under age 16, one specification of rape of a 16-year-old, three specifications of sodomy with a child, five specifications of assault and battery on a child, one specification of aggravated assault with

a force likely to cause death of grievous bodily harm to a child, and an indecent act with a child, in violation of Articles 86 120, 125, 128, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 920, 925, 928, and 934. The approved sentence was confinement for life without the possibility of parole, reduction to pay grade E-1, total forfeiture of pay and allowances and a dishonorable discharge.

This case is before us for the third time. We have twice set aside the convening authority's action and returned the record for proper post-trial review. Said review has now been accomplished. The appellant's sole remaining assignment of error asserts that the approved sentence is disproportionate to his crimes and should be reduced.¹

After examining the record of trial and the pleadings of the parties, 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 remains. Arts. 59(a) and 66(c), UCMJ.

Background

The crimes of which the appellant was convicted are exceptionally heinous. From 2002 to 2005, the appellant, a sergeant in the U.S. Marine Corps, engaged in a secret, escalating pattern of abuse, both physical and sexual, against his three minor step-children. His sexual abuse of MR, his oldest step-daughter, began when she was 10 years old. Record at 524-25. At first, the appellant groomed MR by having her view sexually oriented comic books with him. *Id.* at 525. Then he progressed to inappropriate touching, sodomy, and, eventually, daily and twice-daily rapes of MR. *Id.* at 526-31. During this time, he perpetuated increasingly violent assaults against MR, her younger brother, JR, and her younger sister, CR. These included choking JR until he passed out, kicking CR in the abdomen and giving MR a bloody nose. *Id.* at 527, 531, 552-53, 662-65, 681-84, 743. The appellant sometimes forced his step-children to aid him in the commission of his offenses against their siblings, forcing the children to kick each other and often utilizing the younger children as lookouts for their mother while he raped the older daughter. *Id.* at 674-77, 690-91, 747. Throughout this four-year period, he kept the children in a constant state of terror to the extent that they felt they could not tell their mother or other relatives about his actions. *Id.* at 528, 669, 685, 697, 745.

In 2005, while attending recruiting school in San Diego, the appellant used his older step-daughter and his status as a U.S. Marine to help trick the mother of RS, a 16-year-old girl he had met online, into releasing RS into his care. *Id.* at 262-65.

¹ The appellant's other assignments of error were rendered moot by this court's decisions to set-aside the convening authority's first two actions.

Arriving at RS's house in uniform and with his step-daughter, who had been instructed to play along, he told RS's mother that his step-daughter was a school-friend of RS and that he and his wife wanted to invite the girl to a sleep-over with his daughter and a trip to Sea World. *Id.* at 264-65, 326-27, 570-73. After winning the mother's trust, he instead took the 16-year-old girl, a virgin, to a liquor store and a motel room, where she passed out from the effects of the drink he had given her. *Id.* at 266-68. While she was unconscious, he raped her until she bled so profusely that he told her, "You bled so much I thought you died." *Id.* at 269.

Disproportionate Punishment

The appellant argues that his sentence to life without the possibility of parole is disproportionate to the offenses for which he was convicted and inappropriately severe. He asks this court to approve a sentence of life with the possibility of parole.

A court-martial may impose "any sentence it considers fair and just," provided such punishment falls within the limits of punishment set forth by the UCMJ and the President. *United States v. Turner*, 34 C.M.R. 215, 217 (C.M.A. 1964); RULE FOR COURTS-MARTIAL 1002, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2005 ed.). Art. 66(c), UCMJ, gives this court broad authority to affirm only so much of the findings and sentence as "it determines, on the basis of the entire record, should be approved." *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002) (quoting Art. 66(c), UCMJ). Moreover, Article 66(c), UCMJ, requires that the members of this court independently determine, in every case within its Art. 66, UCMJ, jurisdiction, the sentence appropriateness of each case it affirms. *U.S. v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005).

Sentence appropriateness should be judged on an individualized basis, taking into account "the nature and seriousness of the offens[es] as well as the character of the offender." *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982). However, this court's function of reviewing for appropriate sentence should not be confused with granting of clemency, which remains the unique prerogative of the convening authority. *United States v. Healy*, 26 M.J. 394-395-96 (C.M.A. 1988); *Baier*, 60 M.J. at 384.

We have considered the record of trial, the pleadings of the parties, and the appellant's military record and family history. We considered that he may have, at least on one occasion, been physically abused by his own father. We have also considered the nature and duration of the appellant's offenses. The appellant's physical and sexual abuse of his step-children spanned a four-year period. His other victim was a 16-year-old girl he met on the Internet. The circumstances surrounding the appellant's actions reflected sophisticated efforts on his part to trick the

mothers and relatives of these children into believing that the appellant was properly caring for the children. Record at 326-31, 533, 549, 665, 662, 669, 690-91, 697, 745-47. Far from giving proper care, the appellant systematically terrorized and degraded the children. *Id.* at 576-77, 685, 697, 745. All the child victims and many of their family members continue to suffer psychological and other negative effects from the appellant's acts. *Id.* at 1055-58, 1074, 1091-92, 1117-23, 1133-35, 1156-57.

After reviewing the entire record, we conclude that the approved sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005); *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

Conclusion

The findings and approved sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court