

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

**Before
F.D. MITCHELL, J.A. MAKSYM, P.D. KOVAC
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JAMES G. HUDSON
STAFF SERGEANT (E-6), U.S. MARINE CORPS**

**NMCCA 200900378
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 11 February 2009.

Military Judge: CAPT James Harty, JAGC, USN.

Convening Authority: Commanding Officer, 2d Recruit Training Battalion, Recruit Training Regiment, Marine Corps Recruit Depot, Parris Island, SC.

Staff Judge Advocate's Recommendation: Col W.A. Stafford, USMC.

For Appellant: LT Sarah E. Harris, JAGC, USN.

For Appellee: LCDR C.G. Trivett, JAGC, USN; Maj Elizabeth A. Harvey, USMC.

30 March 2010

OPINION OF THE COURT

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

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of four specifications of violating a lawful general order, two specifications of dereliction of duty, one specification of making a false official statement, three specifications of assault, and one specification of adultery, in violation of Articles 92, 107, 128, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, 928, and 934. The military judge

sentenced the appellant to eight months confinement and a bad-conduct discharge. The convening authority approved the sentence as adjudged, but suspended all confinement in excess of 120 days in accordance with the pretrial agreement.

The appellant's sole assignment of error avers that his sentence was unjustly severe and warrants relief under Article 66(c), UCMJ, because he suffers from Post Traumatic Stress Disorder (PTSD).¹ We have examined the record of trial, the appellant's assignment of error, and the pleadings. 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 involves the judicial function of assuring that justice is done and that the accused gets what 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)).

The appellant was a senior drill instructor at Marine Corps Recruit Depot, Parris Island, South Carolina. Many of the charges of which the appellant stands convicted stem from his maltreatment of recruits and his failure to adequately supervise subordinate drill instructors who were also abusing recruits under their charge. One of the appellant's subordinate drill instructors testified at trial that the appellant encouraged them to abuse the recruits. The appellant's maltreatment of recruits included striking them with open hands and a closed fist, hazing, and discouraging them from reporting his abuse and the mistreatment they suffered at the hands of the other drill instructors. After reviewing the entire record, we find that the sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. Accordingly, we decline to grant appellant any relief.

¹ Submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). At trial, the appellant introduced no evidence of PTSD. At the presentencing portion of trial, the appellant indirectly referenced PTSD in his unsworn statements. Record at 589-90 and Defense Exhibit F. Trial defense counsel also mentioned PTSD in his sentencing argument, prompting the military judge to reopen the providence inquiry. Record at 620-23. Trial defense counsel informed the military judge that he discussed the defense of lack of mental responsibility with his client and that there was no good faith basis for any such defense. *Id.* at 621.

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

For the Court

R.H. TROIDL
Clerk of Court