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

Before
J.A. MAKSYM, E.E. GEISER, J.R. PERLAK
Appellate Military Judges

UNITED STATES OF AMERICA

v.

JOHN D. MENDEZ
MASTER SERGEANT (E-8), U.S. MARINE CORPS

NMCCA 201000051
GENERAL COURT-MARTIAL

Sentence Adjudged: 15 October 2009.
Military Judge: CAPT Carole Gaasch, JAGC, USN.
Convening Authority: Commanding General, Marine Corps Recruit Depot/Western Recruiting Region, San Diego, CA.
Staff Judge Advocate's Recommendation: Col M.B. Richardson, USMC.
For Appellant: CAPT Diane L. Karr, JAGC, USN.
For Appellee: CDR Christopher L. Vanbrackel, JAGC, USN; LT Brian C. Burgtorf, JAGC, USN.

25 May 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 general court-marital convicted the appellant, pursuant to his pleas, of one specification of a violation of a lawful general order, and two specifications of assault consummated by a battery in violation of Articles 92 and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 928. The military judge sentenced the appellant to two years confinement, reduction to pay grade E-1, and a dishonorable discharge. In keeping with the pretrial agreement, the convening authority mitigated the dishonorable discharge to a bad-conduct discharge.

On appeal, the appellant now avers that the sentence of a bad-conduct discharge, reduction to pay grade E-1, and two years confinement is unjustifiably severe.

After considering the record of trial and the submissions by the parties, we find that the sentence is not unjustifiably severe; the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant exists. Arts. 59(a) and 66(c), UCMJ.

Sentence Severity

The appellant asserts that the approved sentence of confinement for two years, reduction to pay grade E-1, and a bad-conduct discharge is unjustifiably severe.[1] We disagree. Based on our review of the entire record we find the sentence appropriate in all respects for the offenses and this offender. *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).

The appellant faced a maximum punishment of a dishonorable discharge, 36 months confinement, reduction to pay grade E-1, and forfeiture of all pay and allowances. Record at 12. Reviewing the record of trial, the appellant presented a notable record of service as a Marine, particularly when serving as a recruiter. Defense Exhibits A-C; Record at 56-62, 67-73, 78-82, 84-88, 95-99. However, this is balanced against the appellant's offenses, which involved providing alcohol to his seventeen-year-old step-niece, grabbing her breast and buttocks, throwing her onto a hotel room bed, and putting his penis to her mouth. Record at 20-38. The approved sentence of confinement for two years, reduction to pay grade E-1, and a bad-conduct discharge is wholly appropriate for this offender and these offenses.

Conclusion

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

For the Court

R.H. TROIDL
Clerk of Court

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[1] We note that during his unsworn statement, the appellant stated to the military judge: "I know . . . you can give me a dishonorable discharge and I deserve that. I deserve that. I ask of you--I probably deserve brig time for my actions." Record at 126.