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

Before
L.T. BOOKER, E.C. PRICE, D.R. LUTZ
Appellate Military Judges

UNITED STATES OF AMERICA

v.

CONNOR T. MCKEAN
LANCE CORPORAL (E-3), U.S. MARINE CORPS

NMCCA 200900657
SPECIAL COURT-MARTIAL

Sentence Adjudged: 11 August 2009.
Military Judge: LtCol Peter Rubin, USMC.
Convening Authority: Commanding Officer, 1st Combat Engineer Battalion, 1st Marine Division (Rein), MARFORPAC, Camp Pendleton, CA.
Staff Judge Advocate's Recommendation: Col B.D. Landrum, USMC.
For Appellant: CAPT Johnathan Bryan, JAGC, USN.
For Appellee: CDR Brendan Curran, JAGC, USN; LT Brian Burgtorf, JAGC, USN.

10 June 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, consistent with his pleas, of willfully disobeying a lawful order of a noncommissioned officer, using disrespectful language towards a noncommissioned officer (2 specifications), wrongful use of marijuana (2 specifications), cocaine (1 specification), oxymorphone (2 specifications), and heroin (1 specification), and wrongfully using provoking words (1 specification), respectively violations of Articles 91, 112a, and 117, Uniform Code of Military Justice, 10 U.S.C. §§ 891, 912a,

and 917. The convening authority approved the adjudged sentence of confinement for 100 days, reduction to pay grade E-1, and a bad-conduct discharge from the U.S. Marine Corps.

The appellant's sole assignment of error asserts that his sentence was inappropriately severe. We have carefully examined the record of trial and the parties' pleadings, and we conclude that the findings and 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 the punishment that 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)).

We have carefully reviewed all evidence before the military judge on sentencing, including defense exhibits A, B, C, D, and E regarding the appellant's military service and his psychological/mental condition. We have also considered the appellant's unsworn statement, including his assertion that his wife was unfaithful to him while he was serving in Iraq. Record at 93-95. We note as well that the some of the appellant's admitted drug use was detected immediately after he returned from the unauthorized absence that formed the basis for the second of two nonjudicial punishments in his record, and that the remainder of his drug use occurred nearly contemporaneously with the disobedience, disrespect, and provoking language offenses of which he now stands convicted. We specifically find that the sentence in this case is appropriate for this offender and his offenses. *United States v. Baier,* 60 M.J. 382, 384 (C.A.A.F. 2005); *Healy,* 26 M.J. at 395-96; *Snelling,* 14 M.J. at 268.

The findings and the approved sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court