

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

**Before  
L.T. BOOKER, J.R. PERLAK, P.D. KOVAC  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**RICARDO A. MEDINA  
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 200900447  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 21 May 2009.

**Military Judge:** Col Daniel Daugherty, USMC.

**Convening Authority:** Commanding Officer, Headquarters and Support Battalion, Marine Corps Base, Camp Lejeune, NC.

**Staff Judge Advocate's Recommendation:** LtCol K.M. McDonald, USMC.

**For Appellant:** CDR Don Evans, JAGC, USN.

**For Appellee:** LDCR Paul Bunge, JAGC, USN; LT Brian Burgtorf, JAGC, USN.

**30 March 2010**

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**OPINION OF THE COURT**  
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**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 plea, of larceny in violation of Article 121, Uniform Code of Military Justice, 10 U.S.C. § 921. The convening authority (CA) approved the adjudged sentence of confinement for three months, reduction to pay grade E-1, and a bad-conduct discharge.

The appellant raises four assignments of error. First, he asserts disparate treatment because another Marine involved in

this case allegedly received no disciplinary action. Second, he contends that he was denied his right to a speedy trial. Third, he requests either a new CA's action or reassessment of the sentence because he argues that it is unclear which of two contradictory "Reports of Results of Trial" were considered by the CA prior to taking action. Finally, the appellant claims that his sentence is inappropriately severe.

We have carefully examined the record of trial, the appellant's brief and assignments 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.

### **Background**

During the early morning hours of 11 November 2008, the appellant observed Corporal (Cpl) O stumbling around drunk outside the barracks at Camp Lejeune, North Carolina. The appellant escorted Cpl O to his barracks room in an effort to secure him for the night. Inside the barracks room, Cpl O became belligerent and a physical altercation ensued. The appellant reported the incident to the duty noncommissioned officer, who directed the appellant to return to Cpl O's room to check on his condition. When the appellant re-entered the room, Cpl O again became combative, resulting in another physical altercation with the appellant. Whether from the effects of the alcohol or the effects of the fighting, Cpl O eventually landed on the floor where he lay helpless. The appellant then stole various personal items from Cpl O that were located in his room.

### **Disparity in Case Dispositions**

In his first assignment of error, the appellant alleges that he suffered disparate treatment in his court-martial proceedings because Cpl O was never disciplined for his actions during the night in question. The appellant contends that this alleged disparity "seriously detracts from the appearance of fairness and integrity that is necessary to the maintenance of good order and discipline." Appellant's Brief of 23 Oct 2009 at 12. The appellant requests the court to reassess his sentence and disapprove the punitive discharge. We conclude that this assignment of error is without merit.

Although not entirely clear, it appears that the appellant is alleging a disparity in the initial disposition of his case.

See *United States v. Noble*, 50 M.J. 293, 294-95 (C.A.A.F. 1999)(stating that where there is no evidence of comparable court-martial findings and sentence, the appellant may bring to our attention other cases that involve a different initial disposition). However, the appellant has failed to provide evidence of any disparity which might lead us to invoke our "broad and highly discretionary" remedial authority. *Id.* at 295. Indeed, other than the appellant's own undocumented assertions in his brief, there is no independent evidence in the record to firmly establish what, if any, punishment or other disposition Cpl O received as a result of this incident. Accordingly, we do not find any basis to grant the appellant relief under this assignment of error.<sup>1</sup>

### **Speedy Trial**

In his second assignment of error, the appellant contends that he "was denied his right to a speedy trial as guaranteed by the Sixth Amendment, R.C.M. 707, and applicable case law." Appellant's Brief at 13. We find that any putative violation of the appellant's right to a speedy trial was waived by his entry of an unconditional guilty plea at his court-martial.

Although the appellant demanded a speedy trial at his arraignment held on 10 April 2009, he subsequently entered into a pretrial agreement and pled guilty in accordance with the terms of that agreement. The appellant was ultimately found guilty of larceny, while significant additional charges were withdrawn and dismissed in accordance with the pretrial agreement. Based upon these facts, it is clear that the appellant's unconditional guilty plea that resulted in a finding of guilty waived any speedy trial issue under both the Sixth Amendment and R.C.M. 707. See *United States v. Tippit*, 65 M.J. 69, 75 (C.A.A.F. 2007); *United States v. Mizgala*, 61 M.J. 122,

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<sup>1</sup> We do not interpret this as a sentence disparity claim because the appellant has not argued or provided any proof that Cpl O was ever court-martialed and sentenced as a result of this incident. See *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999)(stating that a sentence disparity claim occurs where the appellant proves that two or more cases are "closely-related" and involve "highly disparate sentences"); *United States v. Ramirez*, No. 200800821, 2009 CCA LEXIS 272, unpublished op. (N.M.Ct.Crim.App. 31 July 2009)("The issue of sentence uniformity is not present when there is no court-martial record of findings and sentence that can be compared to the appellant's case."). Additionally, to the extent that this claim may be interpreted as raising selective prosecution, such claim would also fail because it was never raised at trial. See *United States v. Henry*, 42 M.J. 231, 235 (C.A.A.F. 1995) (stating that the failure to raise selective prosecution claim at trial "ordinarily" constitutes waiver).

125 (C.A.A.F. 2005); *United States v. Dubouchet*, 63 M.J. 586, 587 (N.M.Ct.Crim.App. 2006); R.C.M. 707(e).

### **Inconsistent Reports of Results of Trial**

There are two "Reports of Results of Trial" in the record. One correctly states the results of trial, but the other incorrectly indicates that the appellant pled guilty to and was found guilty of both larceny and assault. Based on these two conflicting reports, the appellant alleges that it is "unclear as to what may have influenced the convening authority's decision." Appellant's Brief at 16. He further argues that this "ambiguity" requires a new CA's action or reassessment of the sentence. *Id.*

It is clear "[t]he Rules require that the convening authority be informed as to 'the findings and sentence adjudged by the court-martial.'" *United States v. McKinley*, 48 M.J. 280, 282 (C.A.A.F. 1998)(quoting R.C.M. 1106(d)(3)(A)). There is no particular method or form that is mandated for notifying the CA. *Id.* The record clearly indicates that the CA understood the correct finding and sentence in the appellant's case, as the staff judge advocate's recommendation provides a detailed analysis of the charges, pleas, findings, and sentence, and the result of the court-martial was fully consistent with the pretrial agreement he entered with the appellant. There is no evidence of any prejudice resulting from the inconsistent versions of the results of trial reports. The CA, in taking his action on the case, correctly states the appellant's pleas, the findings, and the sentence, and further indicates that he considered other documents in the record where the pleas, findings, and sentence were all correctly stated. See CA's Action of 17 Aug 2009 at 2. The CA was fully aware of the correct findings and sentence prior to taking his action and no prejudice has been demonstrated in the existence of the erroneous, extraneous report. Accordingly, this assignment of error is without merit.

### **Sentence Appropriateness**

In his final assignment of error, the appellant alleges that his sentence is inappropriately severe and asks us to disapprove the punitive discharge. We disagree. The appellant stole personal items from the barracks room of a fellow Marine who was lying unconscious, or at least severely disoriented, on the barracks room floor. The items stolen were the victim's primary source of recreation. Theft from the personal living

space of a Marine is a serious offense bringing adverse impacts upon morale, unit cohesion and the overall good order and discipline. Circumstances in aggravation of the offense were properly considered by the military judge. We find that the sentence is appropriate for this offender and his offense. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

### **Conclusion**

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

For the Court

R.H. TROIDL  
Clerk of Court