

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

**Before
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**VICTOR E. RENNIE
SEAMAN RECRUIT (E-1), U.S. NAVY**

**NMCCA 201000232
GENERAL COURT-MARTIAL**

Sentence Adjudged: 10 December 2009.

Military Judge: LtCol Eugene Robinson, USMC.

Convening Authority: Commander, Navy Region, Mid-Atlantic,
Norfolk, VA.

Staff Judge Advocate's Recommendation: CDR Barry Harrison,
JAGC, USN.

For Appellant: CAPT Diane Karr, JAGC, USN.

For Appellee: CAPT M. Claudette Wells, JAGC, USN; LT Brian
Burgtorf, JAGC, USN.

16 November 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-martial convicted the appellant, pursuant to his pleas, of one specification of conspiracy to possess controlled substances (cocaine, methylenedioxymethamphetamine and marijuana), five specifications of use of controlled substances (one specification each of cocaine, ecstasy, marijuana, oxycodone and lysergic acid diethylamide), and three specifications of distribution of controlled substances (one specification each of cocaine, ecstasy

and marijuana), in violation of Articles 81 and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 881 and 912a.¹ The misconduct occurred from February 2009 to September 2009, while the accused was assigned to a school at Naval Submarine Base Groton. The appellant was sentenced to a reprimand, confinement for five years, forfeiture of all pay and allowances, and a dishonorable discharge. The convening authority approved the sentence as adjudged. Pursuant to a pretrial agreement, all confinement in excess of 18 months was suspended for the period of confinement served plus six months.

The appellant makes two assignments of error: first, that his approved sentence of confinement for five years and a dishonorable discharge is unjustifiably severe since his co-conspirators received lesser sentences of 12 months or less and a bad conduct discharge; and second, that he is entitled to have his official records accurately reflect the results of his court-martial. Appellant's Brief of 4 Jun 2010 at 1. He asks the court to reassess the sentence and award confinement for no more than one year and a bad-conduct discharge. *Id.* at 12. Further, he asks the court to order a corrected promulgating order to reflect that certain specifications were dismissed by the military judge as an unreasonable multiplication of charges. *Id.* at 13.

After carefully considering 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 was committed. Arts. 59(a) and 66(c), UCMJ. However, the court-martial promulgating order contains some erroneous matter, which we will address in our decretal paragraph.

Background

While a student at the Naval Submarine School in 2009, the appellant was a source for controlled substances for fellow Sailors and Submarine School students. The appellant entered into agreements with these individuals whereby they would pool their money in order to be able to make large purchases of controlled substances. The appellant had previously established contact with various drug dealers in the community and he was able to make purchases from these dealers utilizing the pooled resources of his fellow Sailors. The co-conspirators would often drive the appellant to the drug dealers' locations in order for

¹ Upon motion of the defense during trial, the military judge consolidated a number of specifications upon findings. The appellant was originally charged with seven specifications of conspiracy to possess controlled substances, which were found to be multiplicitous by the military judge and thereby consolidated into one conspiracy. Additionally, the appellant was originally charged with 16 specifications of use and distribution of controlled substances. The military judge, finding an unreasonable multiplication of charges for various specifications involving the use and distribution, thereafter consolidated the misconduct.

the appellant to make drug purchases. Following the purchases of drugs, the appellant would distribute the drugs to his fellow Sailors, and, oftentimes, use drugs with them.

Sentence Appropriateness

In his first assignment of error, the appellant asserts that his sentence of confinement for five years and a dishonorable discharge is disparate when compared to sentences awarded in closely related cases. Appellant's Brief at 8-11. He also requests that the court take into consideration his youth, his remorse for his actions, and the strong family support that he has as he works to become a productive member of society. *Id.* at 11.

The appropriateness of a sentence generally should be determined without reference or comparison to sentences in other cases. *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985). We are not required to engage in comparison of specific cases "except in those rare instances in which sentence appropriateness can be fairly determined only by reference to disparate sentences adjudged in closely related cases." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (quoting *Ballard*, 20 M.J. at 283). The burden is upon the appellant to make that showing. *Id.* If the appellant satisfies his burden, the Government must then establish a rational basis for the disparity. *Id.*

To satisfy his burden, the appellant cites at least five cases which were part of the drug conspiracy over which he presided and which he contends are "closely related" to his case. Appellant's Brief at 6, 10. "Closely related cases" are those that "involve offenses that are similar in both nature and seriousness or which arise from a common scheme or design." *United States v. Kelly*, 40 M.J. 558, 570 (N.M.C.M.R. 1994); see also *Lacy*, 50 M.J. at 288 (examples of closely related cases include co-actors in a common crime, servicemembers involved in a common or parallel scheme, or "some other direct nexus between the servicemembers whose sentences are sought to be compared").

The two cases which the appellant cites as "particularly telling" involve Storekeeper Seaman Recruit (SKSR) Saul and Seaman Recruit (SR) Martin. SKSR Saul is named as a co-conspirator in the appellant's case, but SR Martin is not. However, SR Martin was identified by the appellant as a significant participant in a number of the appellant's offenses. Prosecution Exhibit 1. Both SKSR Saul and SR Martin were involved in various offenses with the appellant whereby they conspired to obtain and use controlled substances together. *Id.*²

² SKSR Saul and SR Martin were tried by special court-martial. SKSR Saul was found guilty of two specifications of conspiracy to possess controlled substances, one specification of violation of a lawful general order by underage possession of alcohol, one specification of introduction of

The remaining three cases to which the appellant briefly cites (Engineman Fireman (EMFN) Bardin, Seaman Apprentice (SA) Demarco, and SR Sams) also involve Sailors who were part of the same drug conspiracy as the appellant. *Id.* at 6-7. These three Sailors, SR Sams, EMFN Bardin, and SA Demarco, were involved in the appellant's offenses as either named co-conspirators, or they received drugs from the appellant and used drugs with him.³

Applying the first step in the *Lacy* analysis, we agree with the appellant that the appellant's case and the cases involving SKSR Saul, SR Martin, SR Sams, EMFN Bardin and SA Demarco are closely related.⁴ All six Sailors were involved in a drug conspiracy whereby they possessed, distributed, and used various controlled substances on various occasions over a lengthy period.

Next, we must examine whether the appellant's sentence is highly disparate, and whether there is a rational basis for any disparity. *Lacy*, 50 M.J. at 288. Under the *Lacy* analysis, we do not find the sentence in the appellant's case to be highly disparate. The sentences between the appellant and the other five Sailors are not so different to be "outside "a range of acceptability and range of relative uniformity." *Lacy*, 50 M.J. at 287. While the appellant cites to the total number of offenses between him, SKSR Saul and SR Martin, as to why these two offenders' cases are "particularly telling" to the disparity, this argument is not persuasive. Many of the appellant's offenses were consolidated upon findings by the military judge calling into question the factual predicate for at least part of his claim of prejudice. Furthermore, given that the appellant

controlled substances, three specifications of distribution of controlled substances, and seven specifications of use of controlled substances. SKSR Saul was sentenced to one year of confinement, reduction to E-1, and a bad-conduct discharge. SR Martin was found guilty of three specifications of conspiracy to possess controlled substances, one specification of violating a lawful general regulation by using inhalants, five specifications of use of controlled substances, and one specification of possession of a controlled substance. SR Martin was sentenced to 10 months of confinement, reduction to E-1 and a bad-conduct discharge. Appellant's Brief at 7.

³ Two were tried by special court-martial and received bad-conduct discharges, one received confinement for only six months, the other received confinement for one year, while the third Sailor received an administrative separation in lieu of trial, resulting in an other than honorable conditions discharge. Appellant's Brief at 7.

⁴ The court notes that in the appellant's Brief, as well as in the staff judge advocate's recommendation (SJAR), supplemental SJAR, and convening authority's action, the case of "*United States vs. CS2 James Glaude, USN*" is mentioned either as a companion case or closely related case. There is no mention of Culinary Specialist Second Class (CS2) Glaude in the appellant's record of proceedings as either a co-conspirator or participant in any of the appellant's offenses. However, the results of trial from CS2 Glaude's special court-martial, attached to the supplemental SJAR, detail offenses by CS2 Glaude which pre-date the appellant's offenses, and thus appear to be unrelated to the appellant's case as either a closely related case or companion case, and are therefore not relevant to our sentence disparity comparison.

faced 72 years of confinement, his sentence of five years is relatively short in comparison to the maximum.

Assuming *arguendo* that the appellant's sentence is highly disparate, there are good and cogent reasons to explain the differences in the sentences between the appellant's case and the other five cases. While all six individuals were involved in the drug ring whereby they possessed, distributed, and used various controlled substances, the appellant was the unquestionable leader of the drug ring. He found the drug sources in the community, and when these Sailors wanted drugs, they came to the appellant. Particularly important, during the providence inquiry, the appellant explained to the military judge how he was elevated to the "go-to" man for drugs, "I just meet a lot of people, and I know where to get it, so then people come to me and ask if I could get it, sir." Record at 40. Based upon the connections he had in the illicit drug trade, the appellant's role was far more involved than the other five Sailors, who merely sought him out so as to use drugs. The appellant's offenses are more aggravating based upon his leadership role. Thus, a rational basis exists for any disparity in his sentence.

Finally, a dishonorable discharge is a harsh punishment with serious ramifications, but in this particular case it is not an "unjustifiably severe" punishment. We reach that conclusion after careful consideration and examination of the record of trial, including the documentary evidence and the testimony regarding the appellant's childhood health issues. However, we balance that consideration against the nature of the offenses committed by the appellant. The distribution of drugs on at least 15 occasions and use of various drugs on more than 40 occasions while involving numerous Sailors and civilians in his misconduct, are clearly offenses of a military nature meriting severe punishment. RULE FOR COURTS-MARTIAL 1003(b)(8)(B), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). As the offenses took place among such an important academic setting - the Submarine School, vital to our national security - the sentence seems more than reasonable.

The appellant faced a jurisdictional maximum punishment of 72 years of confinement, a dishonorable discharge, total forfeiture of pay and allowances, and reduction to the lowest enlisted pay grade. After reviewing the entire record, we find the confinement awarded and dishonorable discharge are appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Further sentence relief would amount to clemency. *Healy*, 26 M.J. at 396.

Promulgating Order Errors

In his second assignment of error, the appellant avers that his promulgating order does not reflect that certain specifications were dismissed by the military judge as an unreasonable multiplication of charges. As a remedy, he requests a corrected promulgating order. The Government agrees, in part, and in turn, pleads that any error has not resulted in prejudice to the appellant.

Servicemembers are entitled to records that correctly reflect the results of court-martial proceedings. See *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We note the following errors in the promulgating order:

(1) The appellant was arraigned on and entered pleas of guilty to seven specifications under Charge I, and 15 specifications under Charge II. The promulgating order does not include a summary of Specifications 2-7 under Charge I, and Specifications 2, 3, 6, 8, 12, 15, and 16 under Charge II. See R.C.M. 1114(c) (1);

(2) The CMO does not reflect that Specifications 2-7 under Charge I were consolidated into Specification 1 under Charge I, because the military judge found them to be multiplicitious. Record at 118.

(3) The CMO does not reflect that Specifications 2, 3, 6, 8, 12, 15, and 16 were found by the military judge to be an unreasonable multiplication of charges. Record at 118-19.

(4) The convening authority's action mistakenly states that automatic forfeitures of only 2/3 pay per month were to take effect 14 days after the adjudged sentence, but in the case of a general court-martial, all pay and allowances are automatically forfeited. See Art. 58b, UCMJ.

Conclusion

Finally, we note that the military judge consolidated Specifications 2 and 3 of Charge II into Specification 1, but did not dismiss Specifications 2 and 3 after he consolidated them. Record at 118-19, 139. We therefore dismiss Specifications 2 and 3 under Charge II. No prejudice has been alleged and we find none.

Except as noted above, the findings and the sentence, as approved by the convening authority, are affirmed. We direct that the supplemental court-martial order reflect all of the specifications upon which the appellant was arraigned, his pleas thereto, and the description of each specification. It will also

reflect that by virtue of Articles 58(b), UCMJ, automatic forfeitures of all pay and allowances commencing 14 days after the date the sentence was adjudged.

For the Court

R.H. TROIDL
Clerk of Court