

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

**L.T. BOOKER, J.K. CARBERRY, M. FLYNN  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**CEDRIC R. SEXTON  
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201000195  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 14 October 2009.

**Military Judge:** Maj Glen R. Hines, USMC.

**Convening Authority:** Commanding General, 2d Marine Aircraft Wing, Cherry Point, NC.

**Staff Judge Advocate's Recommendation:** Maj S.D. Schrock, USMC.

**For Appellant:** LT James W. Head, JAGC, USN.

**For Appellee:** LCDR Gregory R. Dimler, JAGC, USN; Capt Mark V. Balfantz, USMC.

**12 August 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.**

FLYNN, Judge:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of engaging in digital penetration of a child under 12 years of age, engaging in anal sex with a child under 12, engaging in oral sex with a child under 12, indecent liberties offenses involving anal and oral sex, and the taking of nude and sexually suggestive photos of a child under 16, in violation of Articles 120 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 934. The misconduct occurred on divers occasions during a four-year period, beginning when the child, the appellant's step-daughter, was five years old. The appellant was sentenced to confinement

for life, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged. Pursuant to a pretrial agreement, all confinement in excess of 22 years was suspended for the period of confinement served plus twelve months.

The appellant makes two assignments of error: first, that his sentence of confinement for life is inappropriately severe given the nature of the offenses, the character of the offender, and the fact that the sentence is highly disparate to sentences awarded in closely related cases; and second, that this court should reassess the appellant's sentence because it is not uniform with sentences in other courts-martial. Appellant's Brief of 24 May 2010 at 1. He asks the court to reassess the sentence and award confinement for no more than 22 years. *Id.* at 8, 10.

After carefully considering the record of trial and the pleadings of the parties, 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**

In his first assignment of error, the appellant asserts that his sentence of confinement for life is disparate when compared to sentences awarded in closely related cases. Appellant's Brief at 4-8. He also contends that the sentence is too severe based on his difficult upbringing, his military service, his acceptance of responsibility, and his "wholehearted embrace of treatment." *Id.* at 5.

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 nine cases decided over the last twenty-five years that he contends are "closely related" and "involve offenses that are similar in both nature and seriousness."<sup>1</sup> Appellant's Brief at 7. "Closely

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<sup>1</sup> *United States v. McElhanev*, 54 M.J. 120 (C.A.A.F. 2000); *United States v. Ediger*, 68 M.J. 243 (C.A.A.F. 2010); *United States v. Miller*, 46 M.J. 63 (C.A.A.F. 1997); *United States v. Mazza*, 67 M.J. 470 (C.A.A.F. 2009); *United*

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 coactors 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").

None of the appellant's cited cases satisfy the "closely related" standard. Although the cases are similar in that they all involve child molestation-type offenses, they are otherwise completely unrelated to the appellant's actions. "The mere similarity of offenses is not sufficient" to demonstrate that cases are "closely related." *United States v. Washington*, 57 M.J. 394, 401 (C.A.A.F. 2002). See also *United States v. Swan*, 43 M.J. 788, 793 (N.M.Ct.Crim.App. 1995) ("Merely comparing the sentences based solely on the similarities of the offenses committed has little relevance to the individualized consideration that should be given to determining an appropriate sentence."); *United States v. Thorn*, 36 M.J. 955, 960 (A.F.C.M.R. 1993) (noting that it is not enough that cases are "somewhat related" but must "involve essentially the same misconduct"). We find that this case is not the "rare instance[]" appropriate for sentence comparison analysis. *Lacy*, 50 M.J. at 288 (quoting *Ballard*, 20 M.J. at 283). Because the appellant has failed to carry his burden, our analysis under sentence disparity need go no further.

In his second assignment of error, the appellant asks the court to reassess the sentence because it is not uniform with sentences for similar offenses in other courts-martial. Appellant's Brief at 8-10. We are required to examine sentence disparities in closely related cases, and permitted -- but not required --- to do so in other cases. *United States v. Wacha*, 55 M.J. 266, 267-68 (C.A.A.F. 2001) (quoting *Ballard*, 20 M.J. at 286). In his second assignment of error, the appellant invites us to consider the same nine cases as a basis for determining that his sentence of confinement for life is not uniform with sentences for similar offenses in other cases. The appellant's brief contains only parenthetical recitations of the charges and sentences in these nine cases, with no discussion of the facts affecting the sentences awarded. The sentences of confinement in the cases cited by the appellant range from four years to forty years, and our own review of other child-molestation cases reflects sentences both greater and lesser than the one before us, underscoring the many factors that bear on sentencing. We are not persuaded that the appellant suffered a miscarriage of

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*States v. Ingham*, 42 M.J. 218 (C.A.A.F. 1995); *United States v. Martin*, 20 M.J. 227 (C.A.A.F. 1985); *United States v. Hayes*, No. 2005 CCA LEXIS 308, unpublished op. (A.F.Ct.Crim.App. 19 Sep. 2005); *United States v. Faus*, 1998 CCA LEXIS 279 (A.F.Ct.Crim.App. 10 Jul 1998); *United States v. Ruppel*, 45 M.J. 578 (A.F.Ct.Crim.App. 1997), *aff'd*, 49 M.J. 247 (C.A.A.F. 1998).

justice merely because some other offender received a lesser punishment. Cf. *United States v. Durant*, 55 M.J. 258, 261 (C.A.A.F. 2001) ("the military system must be prepared to accept some disparity" even in the sentences of co-defendants, "provided each military accused is sentenced as an individual").

A court-martial is free to impose any lawful sentence that it determines appropriate. *United States v. Turner*, 34 C.M.R. 215, 217 (C.M.A. 1964). Our determination of sentence appropriateness under Article 66(c), UCMJ, requires us to analyze the record as a whole to ensure that justice is done and that the accused receives the punishment he deserves. *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). In making this important assessment, we consider the nature and seriousness of the offenses as well as the character of the offender. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). In determining sentence appropriateness, we are mindful that it is distinguishable from clemency, which is a bestowing of mercy and is the prerogative of the convening authority. *Healy*, 26 M.J. at 395.

In determining the two prongs in *Snelling*, the nature and seriousness of the offenses as well as the character of the offender, we have carefully considered the record of trial and the matters presented on behalf of the appellant in extenuation and mitigation. We have also considered the appellant's military service.

The appellant pled guilty to sexually abusing his five-year-old stepdaughter on dozens of occasions over a four-year period. The misconduct included fellatio, cunnilingus, anal sex, digital penetration, and taking pictures of her in nude and sexually suggestive poses. The abuse began a few months after the appellant married the victim's mother and stopped only when the young child found the courage to report the situation to someone at school.

The appellant asserts that his sentence is inappropriately severe in light of the obstacles that he overcame in order to join the Marine Corps, his service while on active duty, the character recommendations submitted on his behalf, and his acknowledgement that he wants and needs treatment. In this regard, the court has considered the testimony and letters submitted describing his difficult childhood which included abuse. Additionally, co-workers attested to his good character and work ethic.<sup>2</sup>

This must be balanced, however, against the heinous nature of his offenses and the impact they had on his young victim. The appellant's abuse of his stepdaughter is abhorrent and has caused severe and life-long psychological injuries to this young girl.

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<sup>2</sup> Notably, on cross-examination some of those endorsements became tepid when the witnesses learned of the charges to which the appellant had pled guilty.

A child psychologist testified that the victim suffers from post-traumatic stress disorder and will suffer continued effects throughout her life. She and her siblings have been separated and moved to another state to live with relatives and she will need continued therapy. Additionally, we note that the misconduct ended only when the appellant was caught and that he requested treatment only after he was placed in pretrial confinement. Although the appellant points to his own difficult upbringing and abuse as a child, we find that those circumstances do not provide a basis for offering sentence relief.

After considering these matters and the entire record, we conclude that the sentence of life confinement, while severe and clearly on the highest end of the spectrum, 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; *Snelling*, 14 M.J. at 268.

Accordingly, the findings of guilty and the sentence, as approved by the convening authority, are affirmed.

Senior Judge BOOKER and Senior Judge CARBERRY concur.

For the Court

R.H. TROIDL  
Clerk of Court