

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

**Before
L.T. BOOKER, J.K. CARBERRY, B.G. FILBERT
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**RYAN G. VOSS
INFORMATION SYSTEMS TECHNICIAN SEAMAN APPERENTICE (E-2),
U.S. NAVY**

**NMCCA 201000239
GENERAL COURT-MARTIAL**

Sentence Adjudged: 13 January 2010.

Military Judge: CDR Mario H. De Oliveira, JAGC, USN.

Convening Authority: Commander, Navy Region Southeast,
Naval Air Station, Jacksonville, FL.

Staff Judge Advocate's Recommendation: LCDR F.J. Yuzon,
JAGC, USN.

For Appellant: LT Michael E. Maffei, JAGC, USN; LT James
Head, JAGC, USN.

For Appellee: CDR Christopher L. VanBrackel, JAGC, USN.

5 October 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 three specifications of failing to go to his appointed place of duty, wrongfully using cocaine, and two specifications of distributing cocaine on divers occasions in violation of Articles 86 and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 912a. The appellant was sentenced to confinement for 25 months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged and, pursuant to

the pretrial agreement, suspended all confinement in excess of 14 months.

The appellant asserts his approved sentence is highly disparate to sentences awarded in closely related cases.¹ He asks that we reassess the sentence and approve a sentence that includes no more than confinement for six months and a bad-conduct discharge.

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.

Sentence Appropriateness

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.* "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, service members involved in a common or parallel scheme, or "some other direct nexus between the service members whose sentences are sought to be compared").

The appellant asserts that his sentence is highly disparate when compared to the sentences awarded in four companion cases. All four cases involved Sailors that the appellant distributed cocaine to during August and September 2009. The appellant also used cocaine with these Sailors during this timeframe. The findings and sentence for each of the companion cases are as follows:

1. Information Systems Technician Seaman Apprentice (ITSA) James Sager was convicted at general court-martial of unauthorized absence and cocaine use. His adjudged and approved sentence was 53

¹ The appellant personally submits this assignment of error pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

days confinement, reduction to pay grade E-1, and a bad-conduct discharge.

2. ITSA Jesse Maya was convicted at special court-martial of unauthorized absence, violating a lawful general order by possessing drug paraphernalia, and marijuana use. His adjudged and approved sentence was 89 days confinement and a bad-conduct discharge. ITSA Maya testified at the courts-martial of two other service members under a grant of testimonial immunity.
3. Cryptologic Technician (Technical) Seaman (CTTSN) Alexander Blaess was convicted at summary court-martial of unauthorized absence, three specifications of cocaine use, marijuana use, distribution of cocaine and larceny. His adjudged and approved sentence was 30 days confinement, forfeiture of 2/3 pay for one month, and reduction to pay grade E-1. CTTSN Blaess testified at the appellant's Article 32, UCMJ, hearing and at the courts-martial of two other service members.
4. Information Systems Technician Seaman Recruit (ITSR) Melissa Ligman was convicted at summary court-martial of unauthorized absence and use and introduction of cocaine. Her adjudged and approved sentence was 30 days confinement, forfeiture of 2/3 pay for one month, and reduction to pay grade E-1. ITSR Ligman testified against the appellant at his Article 32 hearing and his court-martial, and at the courts-martial of two other service members.

Applying the first step in the *Lacy* analysis, we agree with both the Government and the appellant that the appellant's case is closely related to those of ITSA Sager, ITSA Maya, CTTSN Blaess, and ITSR Ligman. It is evident that a "direct nexus" exists between these cases as all four Sailors were sharing cocaine purchased off base by the appellant over the same two-month period (although ITSA Maya was not found guilty of a cocaine offense). Record at 68-69, 71-72, and 95-100; see *Lacy*, 50 M.J. at 288. The CA acknowledged the close relationship between these cases by identifying them as companion cases in the CA's action on the appellant's case. Navy Region Southeast General Court-Martial Order 05-10 of 13 Apr 2010 at 6-7.

Turning to the second part of the *Lacy* analysis, we do not find the approved sentences in these cases to be highly disparate. The appellant was convicted of more serious offenses than the other four Sailors. He admitted and was found guilty of distributing cocaine onboard a military installation on numerous occasions over a two-month period. With the exception of CTTSN

Blaess, none of the other individuals was convicted of any drug distributions. See Consent Motion to Attach of 12 Jul 2010, Encls. (A)-(D). In contrast to the appellant, CTTSN Blaess was convicted of distributing cocaine on a single occasion. See Consent Motion to Attach, Encl. (C) at 3. It is also evident from the appellant's answers during the providence inquiry and the testimony of ITSR Ligman during sentencing proceedings that the appellant was the primary supplier of cocaine to the others. Record at 68-69, 71-72, and 95-100. They both stated that the appellant repeatedly bought cocaine off base and then provided it to the others who then used it in the barracks.

Although our inquiry under *Lacy* necessarily ends upon finding the appellant failed to show sentence disparity, we do find that good and cogent reasons exist for the different sentences in these cases. *Lacy*, 50 M.J. at 288. The appellant was convicted of more serious offenses than the others, he was the primary actor in an ongoing course of conduct to obtain and use cocaine, and all but the appellant and ISTA Sager cooperated and testified against other service members. See *United States v. Rodriguez*, 57 M.J. 765, 774 (N.M.Ct.Crim.App. 2002).

The differences in criminal conduct and the appellant's relatively short confinement sentence lead us to conclude the appellant's sentence was not highly disparate to that of ITSA Sager, ITSA Maya, CTTSN Blaess, and ITSR Ligman. We also note the appellant faced a maximum sentence of over 35 years of confinement, but his approved sentence only included 14 months of unsuspended confinement. Thus, the approved period of confinement is "relatively short compared to the maximum confinement." See *Lacy*, 50 M.J. at 289. Because the appellant has failed to carry his burden, our analysis under sentence disparity need go no further.

We are also satisfied the appellant's sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005).

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

For the Court

R.H. TROIDL
Clerk of Court