

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

**Before
J.K. CARBERRY, B.L. PAYTON-O'BRIEN, M.D. MODZELEWSKI
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**GERALD C. PIGGOTT
HOSPITALMAN (E-3), U.S. NAVY**

**NMCCA 201100310
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 1 March 2011.

Military Judge: CDR Donald King, JAGC, USN.

Convening Authority: Commanding Officer, Naval Hospital,
Pensacola, FL.

Staff Judge Advocate's Recommendation: LT Cheryl R.
Ausband, JAGC, USN.

For Appellant: Capt Michael D. Berry, USMC.

For Appellee: CDR Kimberly D. Hinson, JAGC, USN; Maj
William C. Kirby, USMC.

31 October 2011

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

A military judge at a special court-martial convicted the appellant, pursuant to his pleas, of an orders violation, wrongful use of controlled substances, and larceny, in violation of Articles 92, 112a, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 912a, and 921. Officer members sentenced the appellant to a fine of \$900.00 and to be confined for six months

if the fine was not paid, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

We have examined the record of trial, and the parties' briefs. The appellant's sole assigned error is that the sentence, which included a bad-conduct discharge, was unjustifiably severe. We disagree.

This court reviews the appropriateness of the sentence *de novo*. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005). "Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). We engage in a review that gives "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamuluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). Applied to the facts of this case, in which the appellant stole drugs from the hospital, stole money from the galley, used controlled substances, and failed to obey an order involving patient care, we find the sentence is appropriate. We also note that trial defense counsel requested a bad-conduct discharge in lieu of other punishment at his client's request, following the proper inquiry by the military judge. Record at 328-30, 383; Appellate Exhibit XX.

Although not raised on appeal, we note an error in the record that requires our attention. The court-martial order reflects that the appellant pled guilty and was found guilty under Charge III, Specification 2, of theft of an I.V. bag containing Fentanyl, a schedule II controlled substance, "on divers occasions." In fact, the appellant was charged with, and convicted of, only one theft of Fentanyl. This error does not materially prejudice a substantial right of the appellant, but the appellant is entitled to have his official records accurately reflect the results of his court-martial. *United States v. Crumpley*, 49 M.J. 538 (N.M.Ct.Crim.App. 1998). We will order the necessary corrective action.

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. The findings and the sentence as approved by the convening authority are affirmed. We direct that the

supplemental court-martial order accurately summarize
Specification 2 of Charge III.

For the Court

R.H. TROIDL
Clerk of Court