

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

**Before
J.A. MAKSYM, J.R. PERLAK, R.E. BEAL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**AARON M. UNKLE
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201100424
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 17 May 2011.

Military Judge: LtCol Robert Ward, USMC.

Convening Authority: Commanding Officer, 2d Marine
Regiment, 2d Marine Division, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Col T.M. Dunn,
USMCR.

For Appellant: CAPT Johnathan Bryan, JAGC, USN.

For Appellee: LCDR C.A. Poulson, JAGC, USN; LT B.J.
Voce-Gardner, JAGC, USN.

27 December 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 sitting as a special court-martial convicted the appellant, pursuant to his pleas, of attempted larceny, conspiracy to commit larceny, violation of a lawful general order, and larceny in violation of Articles 80, 81, 92, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 881, 892, and 934. The appellant was sentenced to confinement for ten months, reduction to pay grade E-1, and a bad-conduct

discharge. The convening authority (CA) approved the sentence as adjudged.

The appellant's sole assigned error is that his sentence is disparately severe from that of his accomplice/co-conspirator, Hospitalman (HN) Tyron Layug, U.S. Navy, who was convicted of similar charges at a special court-martial and sentenced to confinement for five months, forfeiture of \$978.00 pay per month for five months, reduction to pay grade E-1, and a bad-conduct discharge. We disagree.

The Government concedes, and we find, that HN Layug's case is closely related to the appellant's case. However, based upon our review of the record, we find that the appellant has not met his burden of demonstrating that his sentence is highly disparate when compared with the sentence of HN Layug.

Sentence comparison does not require sentence equation. *United States v. Durant*, 55 M.J. 258, 260 (C.A.A.F. 2001) (citing *United States v. Ballard*, 20 M.J. 282 (C.M.A. 1985) and *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982)). The test is not limited to a narrow comparison of the relative numerical values of the sentences at issue, but also may include consideration of the disparity in relation to the potential maximum punishment. *United States v. Lacy*, 50 M.J. 286, 289 (C.A.A.F. 1999). By exercising our authority to determine sentence appropriateness under Article 66(c), UCMJ, the goal is "to attain *relative* uniformity rather than an arithmetically averaged sentence." *Id.* at 288 (quoting *United States v. Olinger*, 12 M.J. 458, 461 (C.M.A. 1982) (emphasis in original)).

We note that the two cases were brought by the same CA and both entered guilty pleas but before different military judges.¹ While it is true that the appellant's sentence was more severe than HN Layug in terms of confinement, HN Layug's sentence was more severe than the appellant's in terms of forfeitures. While there are differences between the appellant's sentence and HN Layug's, on the whole we do not consider them to be "highly disparate." As the Court of Appeals for the Armed Forces has observed, "the military system must be prepared to accept some disparity in the sentencing of codefendants, provided each military accused is sentenced as an individual." *Durant*, 55 M.J. at 261 (citations omitted).

¹ We note that the only consideration the CA offered the appellant in exchange for his pleas was referral of charges to a special court-martial rather than forwarding the charges to an appropriate CA with a recommendation they be referred to a general court-martial.

Even if we had found the sentences to be "highly disparate," considering the facts and circumstances of each case, we would also find that a rational basis exists for the disparity. *United States v. Sothen*, 54 M.J. 294, 296 (C.A.A.F. 2001) (citing *Lacy*, 50 M.J. at 288). The appellant was a noncommissioned officer and senior to both his accomplice and one of the victims of his numerous larcenies, a private first class assigned to the same platoon as the appellant.

The appellant has not met his burden of showing that his sentence is highly disparate to the sentence in the companion case, and the record provides good and cogent reasons for any disparity that does exist. We have also considered the mitigating facts of the appellant's combat service in Afghanistan, for which he was awarded a Combat Action Ribbon and the Purple Heart.

We conclude that the sentence approved by the CA is appropriate for this offender and his offenses, and decline to grant relief. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005); *United States v. Healy*, 26 M.J. 394 (C.M.A. 1988); *Snelling*, 14 M.J. at 267.

Conclusion

We affirm the findings and the sentence as approved by the CA.

For the Court

R.H. TROIDL
Clerk of Court