

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

**Before
J.K. CARBERRY, M.D. MODZELEWSKI, D.O. HARRIS
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**ROBERT C. BOOKER
STAFF SERGEANT (E-6), U.S. MARINE CORPS**

**NMCCA 201100432
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 20 June 2011.

Military Judge: Maj Robert G. Palmer, USMC.

Convening Authority: Commanding Officer, Support Battalion,
Recruit Training Regiment, Marine Corp Recruit Depot/Eastern
Recruiting Region, Parris Island, SC.

Staff Judge Advocate's Recommendation: LtCol E.R. Kleis,
USMC.

For Appellant: LCDR Shannon Llenza, JAGC, USN.

For Appellee: Mr. Brian K. Keller, Esq.

13 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:

After careful consideration of the record, submitted without assignment of error, we affirm the findings and sentence as approved by the convening authority. Art. 66(c), Uniform Code of Military Justice, 10 U.S.C. § 866(c).

HARRIS, Judge (concurring):

I concur in affirming the findings and sentence in this case. I write separately because that conclusion was extremely difficult for me to reach.

The appellant pled guilty to a series of relatively small larcenies, in which he would return excess gear obtained in his official capacity to the Marine Corps Exchange (MCX) and receive store credit. Over a period of several months, he spent that store credit on items for his personal use, reaching an aggregate amount stolen of over \$600.00. The appellant's motive for doing so was his dire financial situation, which had already led to the repossession of a vehicle and command counseling.

Although not raised or briefed by appellate counsel, I regard this case as a very close call on whether to affirm a bad-conduct discharge. See generally *United States v. Ashby*, 68 M.J. 108, 124 (C.A.A.F. 2009) (stating that this court has "broad authority" to determine the findings and sentence that should be approved). The appellant, a staff sergeant, had twelve years of exemplary service. His decorations include a Purple Heart, a Combat Action ribbon, three Iraq Campaign medals, and four Good Conduct medals. The appellant's case in mitigation included testimony or letters of support from five Marine staff noncommissioned officers and two officers. The appellant and his counsel presented a strong case in extenuation and mitigation.

In contrast, much of the trial counsel's closing argument in support of a punitive discharge focused on the sheer number of fraudulent returns and the extended period of time over which those transactions occurred. Record at 94-96. Those are certainly proper aggravating factors; however, the Government also offered a document identified as a "potential return abuser" report. Prosecution Exhibit 3. This document indicates that the MCX had identified the appellant as a possible suspect in criminal activity as early as July 2010, yet apparently took no action for several months. PE 3. I find that combination troubling.

Moreover, the appellant's First Sergeant testified that she was aware of the appellant's personal financial difficulties and had counseled him on the subject, but stated very candidly that "had [she] attacked it a little bit more aggressively maybe we wouldn't be here." I cannot help but wonder if faster action by the MCX after the first few suspicious transactions would have spurred the appellant's chain of command to do so. Unfortunately, we will never know.

Courts of criminal appeals are tasked with determining sentence appropriateness, as opposed to bestowing clemency, which is the prerogative of the convening authority. See *United States v. Mazer*, 58 M.J. 691, 701 (N.M.Ct.Crim.App. 2003) (citing *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988)). For that reason, I reluctantly affirm the entire sentence in this case. It is truly sad to see the career of a Marine staff sergeant, who has given much to his country, end in this way.

For the Court

R.H. TROIDL
Clerk of Court