

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

**Before  
C.L. REISMEIER, F.D. MITCHELL, R.E. BEAL  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**E. FELICIA FERRARA  
ENSIGN (O-1), NURSE CORPS, U.S. NAVY**

**NMCCA 201000553  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 17 June 2010.

**Military Judge:** CAPT Carole Gaasch, JAGC, USN.

**Convening Authority:** Commander, Naval Medical Center, San Diego, CA.

**Staff Judge Advocate's Recommendation:** CDR M.E. Moss, JAGC, USN.

**For Appellant:** CAPT Stephen White, JAGC, USN.

**For Appellee:** Capt Mark Balfantz, USMC.

**15 February 2011**

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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.**

**PER CURIAM:**

A military judge sitting as a general court-martial convicted the appellant, consistent with her pleas, of wrongful use of Oxycodone, larceny of military property, and fraternization, in violation of Articles 112a, 121, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 912a, 921, and 934. The appellant was sentenced to confinement for nine months, total forfeiture of pay and allowances, and a dismissal from the United States Navy. The convening authority approved the sentence as adjudged, but suspended all confinement in excess of five months for a period of 12 months in accordance with the pretrial agreement.

In her sole assignment of error, the appellant avers that her sentence is disproportionately harsh compared with the sentence received by her co-actor.<sup>1</sup> We have carefully reviewed the record of trial, the appellant's assignment of error, and the Government's response. 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 Severity**

The appellant asserts that her sentence is inappropriately severe and requests that this court "only approve that part of Appellant's sentence that extends to confinement for five months and total forfeitures of all pay and allowances." Appellant's Brief of 23 Nov 2010 at 7-8. The crux of the appellant's argument is that her co-actor, Hospital Corpsman Third Class (HM3) W, pleaded guilty to similar misconduct at a special court-martial and his sentence wasn't nearly as severe.<sup>2</sup> The appellant further argues that the record does not justify the disparity in sentences. We disagree.

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets what he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). This requires "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

In addition to fraternizing with HM3 W, the appellant pleaded guilty to not only wrongfully using Oxycodone, but to using her position as a nurse to steal said medication from the Naval Medical Center, San Diego. During the providence inquiry, the appellant admitted that she was able to circumvent the biometric security precautions put in place to prevent the pilfering of medications because she was one of the persons entrusted to properly safeguard these medications and dispense

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<sup>1</sup> This assignment of error submitted pursuant to *United States v. Grostefon*, 12 M.J. 431, 435 (C.M.A. 1982).

<sup>2</sup> The charges to which the appellant pleaded guilty included wrongful use of Oxycodone and fraternization. During her providence inquiry, the appellant admitted that she used Oxycodone in front of and with an enlisted member assigned to her command. This conduct, and other behaviors, formed the basis for the fraternization charge. Her co-actor with regard to the fraternization charge, HM3 W, pleaded guilty at a special court-martial to wrongful use of heroin and Oxycodone, and fraternization with the appellant. He was sentenced to six months confinement, forfeiture of \$954.00 pay per month for two months, and reduction to pay grade E-1. The convening authority suspended all confinement in excess of 30 days for a period of 12 months. HM3 W was administratively processed and received an other than honorable discharge.

them to her patients. The record does not reflect that the appellant's "co-actor" was involved at all in the theft of Oxycodone from the Naval Medical Center, San Diego. We do not find that these cases are so closely related that the resulting punishments are disparate in nature. After reviewing the entire record, we find the sentence appropriate for this offender and her offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268.

Accordingly, we affirm the findings of guilty and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL  
Clerk of Court