

**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.**

**JOSE A. GUERRA  
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201000462  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 11 May 2010.

**Military Judge:** LtCol David Jones, USMC.

**Convening Authority:** Commanding General, III Marine Expeditionary Force, Okinawa, Japan.

**Staff Judge Advocate's Recommendation:** Col P.J. Betz, Jr., USMC.

**For Appellant:** Maj Kirk Sripinyo, USMC.

**For Appellee:** CDR Brendan C. Curran, JAGC, USN; Capt Mark V. Balfantz, USMC.

**28 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, pursuant to his pleas, of disobeying a lawful general order, wrongful sexual contact, and forcible sodomy, in violation of Articles 92, 120, and 125, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 920, and 925. The trial judge sentenced the appellant to confinement for 48 months, reduction to pay grade E-1, total forfeitures, and a bad-conduct discharge. The convening authority approved the sentence as adjudged but, in accordance with a pretrial agreement, suspended all confinement in excess of 15 months.

The appellant's sole assigned error is that a bad-conduct discharge constitutes an inappropriately severe sentence under the facts of this case. We have carefully reviewed the record of trial, the appellant's assigned 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 appropriateness involves the judicial function of assuring that justice is done and that the accused gets what he deserves." *Unites 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 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). After reviewing the entire record, we find the sentence appropriate for this offender and his 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