

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

**Before
J.A. MAKSYM, B.L. PAYTON-O'BRIEN, R.Q. WARD
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**SHANE R. BARDES
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100612
GENERAL COURT-MARTIAL**

Sentence Adjudged: 6 July 2011.

Military Judge: LtCol Michael Mori, USMC.

Convening Authority: Commanding General, 3d Marine
Division, Marine Corps Base Hawaii, Kaneohe Bay, HI.

Staff Judge Advocate's Recommendation: LtCol K.J. Estes,
USMC.

For Appellant: Capt Michael Berry, USMC.

For Appellee: CAPT Martin A. Grover, JAGC, USN; LT Benjamin
J. Voce-Gardner, JAGC, USN.

30 April 2012

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 general court-martial convicted the appellant, pursuant to his pleas, of one specification of rape by force and one specification of forcible anal sodomy, in violation of Articles 120 and 125, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 925, respectively. The military judge sentenced him to confinement for five years,

a \$40,000.00 fine, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged.

We have examined the record of trial, the appellant's sole assignment of error alleging that his sentence was inappropriately severe, and the Government's response. We conclude that the findings and sentence are correct in law and fact and that no error was committed that was materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

Sentence Appropriateness

The appellant argues that he was not unjustly enriched by his crimes and thus a fine of \$40,000.00 is inappropriate. We disagree.

Fines may be imposed even in the absence of unjust enrichment. *United States v. Stebbins*, 61 M.J. 366, 372 (C.A.A.F. 2005). We have a duty under Article 66(c), UCMJ, to independently review the sentence of each case within our jurisdiction and only approve that part of a sentence which we find should be approved. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). Our determination of sentence appropriateness under Article 66(c), UCMJ, requires us to analyze the record as a whole to ensure that justice is done and that the accused receives the punishment he deserves. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). In making this important assessment, we consider the nature and seriousness of the offenses as well as the character of the offender. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

Here, the heinous nature of the appellant's offenses militates against granting relief. The appellant forcibly anally sodomized his first victim while her two year old daughter lay asleep in an adjacent room. Record at 167-68. He violently raped his second victim, choking her till she lost consciousness. Record at 178-79. His crimes caused physical, psychological and emotional harm to his victims. Record at 167-70, 183-85.

After carefully considering the entire record of trial and the nature and seriousness of these offenses, we find the sentence to be appropriate for this offender and the offenses committed. Granting additional sentence relief at this point

would be engaging in clemency, a prerogative reserved for the convening authority, and we decline to do so. See *Healy*, 26 M.J. at 395-96.

Conclusion

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