

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

**Before  
J.R. PERLAK, J.K. CARBERRY, M.D. MODZELEWSKI  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**BRIAN I. CARMICHAEL  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201200091  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 3 August 2011.

**Military Judge:** LtCol Robert G. Palmer, USMC.

**Convening Authority:** Commanding General, 2d Marine Aircraft  
Wing, II Marine Expeditionary Force, Cherry Point, NC.

**Staff Judge Advocate's Recommendation:** Col Stephen C.  
Newman, USMC.

**For Appellant:** Capt Bow Bottomly, USMC; LT Toren Mushovic,  
JAGC, USN.

**For Appellee:** CDR Kevin L. Flynn, JAGC, USN; Capt David N.  
Roberts, USMC.

**26 June 2012**

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**OPINION OF THE COURT**  
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**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 violation of the joint ethics regulation by wrongfully using a Government computer to access, store, process and display offensive or obscene material and one specification

each of knowingly receiving and possessing obscene visual depictions of minors engaged in sexually explicit conduct, in violation Articles 92 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 934. Prior to sentencing, the military judge dismissed the possession specification as multiplicitous. The appellant was sentenced to a bad-conduct discharge, confinement for twelve months, forfeiture of all pay and allowances for twelve months, and reduction to pay grade E-1. The convening authority (CA) approved the sentence as adjudged and, except for the bad-conduct discharge, ordered it executed.<sup>1</sup>

The appellant raises one assignment of error, averring that a bad-conduct discharge is unjustifiably severe.<sup>2</sup> We disagree and decline to grant relief.

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment 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 the 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)).

The appellant signed out a Government computer and used it to amass various cartoon imagery, referred to in the record as "anime,"<sup>3</sup> which included depictions of children engaged in sexually explicit conduct. The appellant admitted to collecting anime child pornography over a six-month period, using the Government computer and an associated drive. He admitted that the materials described were obscene and his actions in receiving them were in violation of 18 U.S. Code § 1466A(a), the federal obscenity statute. The imagery admitted at trial in Prosecution Exhibit 4 was appropriately ordered sealed by the military judge.

After *de novo* review of the entire record, we find that the sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005);

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<sup>1</sup> To the extent that the CA's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543 (N.M.Ct.Crim.App. 2011).

<sup>2</sup> Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

<sup>3</sup> "Anime" is a Japanese style of animated cartoon, often with violent or sexually explicit content.

*Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. Granting sentence relief at this point would be to engage in clemency, a prerogative reserved for the CA, and we decline to do so. *Healy*, 26 M.J. at 395-96.

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

For the Court

R.H. TROIDL  
Clerk of Court