

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

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

UNITED STATES OF AMERICA

v.

**FRANCISCO R. CASTRO
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201100453
GENERAL COURT-MARTIAL**

Sentence Adjudged: 24 May 2011.

Military Judge: LtCol Stephen Keane, USMC.

Convening Authority: Commanding General, Marine Corps
Recruit Depot, Western Recruiting Region, San Diego, CA.

Staff Judge Advocate's Recommendation: LtCol S.M. Sullivan,
USMC.

For Appellant: CDR R.D. Evans, Jr., JAGC, USN.

For Appellee: LT Joseph M. Moyer, JAGC, USN.

31 January 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 three specifications of attempted larceny, one specification of unauthorized absence, and seven specifications of larceny, in violation of Articles 80, 86, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 886, and 921. The military judge sentenced the appellant to confinement for fourteen months, forfeiture of all pay and allowances, a fine of \$2,100.00,

reduction to pay grade E-1, and a bad-conduct discharge. Pursuant to a pretrial agreement, the convening authority approved the sentence as adjudged, but suspended confinement in excess of nine months.

The appellant raises three errors related to the fine: that a fine was inappropriate because the United States was not the victim of the larcenies; that the appellant did not receive adequate notice that a fine could be imposed in addition to total forfeitures; and that the fine is unenforceable as a matter of law. Upon careful consideration of the record of trial and the briefs, 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.

Background

While serving as a drill instructor at Marine Corps Recruit Depot, San Diego, the appellant stole debit cards, cash, and personal items from several recruits. Using personal identification numbers (PINs) that he obtained from searching the recruits' personal property, the appellant attempted to withdraw money from their accounts at the local credit union. Although unable to withdraw funds from some accounts because he had inaccurate PINs, the appellant successfully withdrew approximately \$2,048.00 from the bank accounts of two recruits. At trial, it was established that the credit union had credited the accounts of the two recruits once the thefts were reported; that the credit union had absorbed the financial loss of approximately \$2,450.00; and that the appellant had not made restitution to the credit union.

Discussion

In his first assignment of error, the appellant concedes that the fine is a legal punishment,¹ but alleges that the imposition of the fine as part of his sentence is inappropriate where the United States is not the victim of his larcenies.² We disagree. The appellant's argument would reduce a fine to being applicable only where the United States was the victim, a position not supported by case law.

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

¹ Appellant's Brief of 4 November 2011 at 11.

² *Id.* at 12-17.

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)).

In light of the entire record, to include the repeated nature of the larcenies and attempted larcenies, and the appellant's abuse of his position of authority over the recruits, we find that the sentence, including the fine, is appropriate for this offender and his offense. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268.

Second, the appellant alleges that he was not properly advised during the plea inquiry that he could receive a fine as well as total forfeitures. The record does not support this contention. During the plea inquiry, the military judge informed the appellant that the maximum sentence for the offenses to which he had entered pleas of guilty was confinement for a period of ten years and one month, a dishonorable discharge, reduction to pay grade E-1, and forfeiture of all pay and allowances.³ After the appellant acknowledged his understanding, the military judge asked the appellant if he understood that he "could also potentially receive a fine" and the appellant acknowledged that he understood.⁴ Based on the plain language of the record, we find adequate notice.

Finally, the appellant asserts that the fine is not a legally enforceable obligation because the sentence did not include an enforcement provision for the fine, i.e., additional confinement to be served in the event the fine is not paid. We find no merit in this argument. See RULE FOR COURTS-MARTIAL 1003(b)(3), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

³ Record at 18.

⁴ *Id.* at 19.

Conclusion

We affirm the findings and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court