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

Before
C.L. REISMEIER, B.L. PAYTON-O'BRIEN, R.Q. WARD
Appellate Military Judges

UNITED STATES OF AMERICA

v.

JEFFREY A. DENNIS, JR.
CORPORAL (E-4), U.S. MARINE CORPS

NMCCA 201200057
GENERAL COURT-MARTIAL

Sentence Adjudged: 7 October 2011.
Military Judge: CAPT David Berger, JAGC, USN.
Convening Authority: Commanding General, 3d Marine Division Okinawa, Japan.
Staff Judge Advocate's Recommendation: LtCol K.J. Estes, USMC.
For Appellant: Capt Bow Bottomly, USMC.
For Appellee: CDR Brendan Curran, JAGC, USN; LT Benjamin J. Voce-Gardner, JAGC, USN.

21 June 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:

Members with enlisted representation sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of escape from confinement in violation of Article 95, Uniform Code of Military Justice, 10 U.S.C. § 895.[1]

[1] The members acquitted the appellant of two specifications of aggravated assault upon his one-year-old stepdaughter.

The panel sentenced the appellant to twelve months confinement, forfeiture of $968.00 pay per month for twelve months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged. The appellant alleges that his sentence is inappropriately severe.

We have examined the record of trial, the appellant's assignment of error, and the pleadings of the parties. 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.

Analysis

Our duty under Article 66(c), UCMJ, is 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). This obligation 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).

The appellant argues that his sentence is unjustifiably severe and that the members sentenced him in part for the aggravated assault offenses against his stepdaughter, offenses of which he was acquitted. Appellant’s Brief of 27 Mar 2012 at 8. In support of his contention, he points to his record of service, the victimless nature of his crime, and the short duration of his escape before he was apprehended and brought back within military control.

Our review of the record does not lead us to the same conclusion. We find no evidence in the record that the panel relied upon the aggravated assault offenses in their selection of a sentence. The trial counsel specifically pointed out that the appellant was to be sentenced for what he had done, a violation of Article 95, UCMJ. Record at 494. The military judge correctly instructed the members to sentence the appellant only for the offense of which he was found guilty, and only consider evidence admitted during the merits phase as it pertained to that offense. *Id.* at 499, 502. Our review of the record shows that the panel was properly instructed and the law

presumes that members follow the military judge's instructions. *United States v. Tyndale*, 56 M.J. 209, 216 (C.A.A.F. 2001). Therefore, we are not persuaded that in choosing a sentence the members improperly relied upon the offenses for which the appellant was acquitted.

We now turn to our own *de novo* review of the appellant's sentence, keeping in mind that courts of criminal appeals are tasked with determining sentence appropriateness, as opposed to bestowing clemency, which is the prerogative of the convening authority. *United States v. Mazer*, 58 M.J. 691, 701 (N.M.Ct.Crim.App. 2003). The appellant deployed twice during his enlistment, once to Iraq and once to Afghanistan. Record at 483. No evidence of any prior misconduct was admitted before the panel. A Marine captain, a gunnery sergeant and a fellow corporal all testified in mitigation to the appellant's good military character. *Id*. at 481-94. However, the panel also heard evidence during the merits phase of how the appellant escaped from his chasers' custody following his pretrial confinement review hearing. Several hours later, following a base-wide security alert, several Marines in civilian clothes along with a military policeman captured the appellant as he was fleeing on foot. *Id*. at 355-57, 361-63. Under the facts of this case, we conclude that the appellant's sentence was fair and just. *Baier*, 60 M.J. at 384.

Conclusion

The findings and sentence as approved by the convening authority are affirmed.

For the Court

R.H. TROIDL
Clerk of Court