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

Before
C.L. REISMEIER, J.K. CARBERRY, M.D. MODZELEWSKI
Appellate Military Judges

UNITED STATES OF AMERICA

v.

WILLIAM C. FAIRLEY
AVIATION MACHINIST'S MATE SECOND CLASS (E-5), U.S. NAVY

NMCCA 200900574
GENERAL COURT-MARTIAL

Sentence Adjudged: 27 August 2008.
Military Judge: CDR Mario DeOliveira, JAGC, USN.
Convening Authority: Commander, Navy Region Southeast, Jacksonville, FL.
Staff Judge Advocate's Recommendation: CDR F.J. Yuzon, JAGC, USN (2 and 15 Oct 2009); CDR M.C. Holifield, JAGC, USN (6 Aug and 27 Sep 2010).
For Appellant: LT Daniel C. LaPenta, JAGC, USN; LT Ryan Santicola, JAGC, USN.
For Appellee: Maj William C. Kirby, USMC; LCDR Sergio Sarkany, JAGC, USN.

23 February 2012

OPINION OF THE COURT

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of two specifications of aggravated sexual assault, one specification of abusive sexual contact, and one specification of adultery, in

violation of Articles 120 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 934. The military judge sentenced the appellant to nine years confinement, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged, and except for the punitive discharge, ordered the sentence executed.

On 17 May 2011, this court affirmed the findings and the sentence. The appellant filed a petition for review with the Court of Appeals for the Armed Forces, which granted the petition, vacated this court's decision, and returned the case to this court for consideration of the granted issue in light of light of *United States v. Fosler,* 70 M.J. 225 (C.A.A.F. 2011). Pursuant to *United States v. Grostefon,* 12 M.J. 431 (C.M.A. 1982), the appellant also filed a supplemental brief in which he alleged that the specification under Charge II and Specification 2 under Additional Charge II failed to state offenses under Article 120 because they omitted the words "Aggravated Sexual Assault."

Regarding the remanded question and for the reasons set forth in *United States v. Hackler*, ___ M.J. ___, No. 201100323, 2011 CCA LEXIS 371 (N.M.Ct.Crim.App. 22 Dec 2011), we conclude that the sole specification under Charge III stated an offense. As to the appellant's contention that the specification under Charge II and Specification 2 under Additional Charge II failed to state offense, we disagree as the elements were all plainly alleged. For the reasons set forth in our opinion of 17 May 2011, we again 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.

Accordingly, we affirm the findings and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court