

**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.**

**JEFFERY H. GOBER  
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201100632  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 25 August 2011.

**Military Judge:** Col Deborah M. McConnell, USMC.

**Convening Authority:** Commanding Officer, 2d Marine  
Regiment, 2d Marine Division, Camp Lejeune, NC.

**Staff Judge Advocate's Recommendation:** Maj J.T. Leggett,  
USMC.

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

**For Appellee:** LCDR Craig A. Poulson, JAGC, USN; LT Benjamin  
J. Voce-Gardner, JAGC, USN.

**29 March 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 special court-martial convicted the appellant, pursuant to his pleas, of one specification of unauthorized absence terminated by apprehension, one specification of violating a lawful general order, one specification of wrongful possession of a controlled substance, and one specification of wrongful use of a controlled

substance, in violation of Articles 86, 92, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, and 912a. The military judge sentenced the appellant to six months confinement, forfeiture of \$978.00 per month for six months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

In the appellant's sole assignment of error, he contends that the bad-conduct discharge is inappropriately severe given the circumstances of his case. After carefully considering the record of trial, and the submissions of the parties, we are convinced 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 occurred. Art. 59, UCMJ. However, we find that the approved sentence was inappropriately severe in light of the appellant's combat service and evidence of his mental health problems following combat losses in his squad. We will take corrective action in our decretal paragraph.

#### **Sentence Appropriateness**

In accordance with Article 66(c), UCMJ, a military appellate court "may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." 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 enlisted in the Marine Corps in April 2007. He distinguished himself in his first combat tour in Iraq in 2008, was selected to attend the Infantry Squad Leaders Course as a lance corporal, and was meritoriously promoted to corporal in March 2009. In October 2009, the appellant was meritoriously promoted to sergeant. During the same short time frame, he received two meritorious masts and a personal award.

Immediately following his promotion to sergeant, the appellant deployed to Afghanistan as a patrol squad leader. The following month, his squad was ambushed and lost two men, one of

them the appellant's best friend. Following that event, the appellant quickly succumbed to depression, and began a spiral downward that led to his special court-martial.

In theater, the appellant was charged with unauthorized use of sleeping medications, and awarded nonjudicial punishment that included a reduction to corporal. During the same period, the appellant was diagnosed with Major Depressive Disorder and Post Traumatic Stress Disorder (PTSD). Shortly after his unit's return stateside, the appellant was charged with possession and use of cocaine. When placed on legal hold for these drug charges, the appellant left Camp Lejeune for his hometown, where he remained for approximately two months before he was apprehended by local authorities pursuant to a federal warrant. At his court martial, the appellant's company commander and his platoon commander submitted statements that highlighted both the appellant's remarkable accomplishments early in his first enlistment and his inability to cope with his squad's losses in Afghanistan. The staff noncommissioned officer noted that the appellant "had the highest pro/con average that I have ever personally seen in my career," and that the appellant served in positions of exceptional responsibility during his deployment to Iraq, although only a lance corporal at the time.

In addition to considering the nature and seriousness of the specific offenses committed by the appellant, we have carefully considered the individual characteristics of the offender. This includes this Marine's distinguished performance in combat and his disciplinary record, which consists of the nonjudicial punishment imposed for the unauthorized use of pharmaceuticals in Afghanistan at a time when he was suffering from what has been diagnosed as PTSD and Major Depressive Disorder. Considering the entire record, we conclude that justice is done by affirming only the approved confinement, reduction, and forfeitures.

### **Conclusion**

The findings are affirmed. So much of the approved sentence as provides for confinement for six months, reduction to pay grade E-1, and forfeiture of \$978.00 pay per month for six months is affirmed. The bad-conduct discharge is set aside.

For the Court

R.H. TROIDL  
Clerk of Court