

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

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

UNITED STATES OF AMERICA

v.

**AARON M. GRASSO
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201200143
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 7 December 2011.

Military Judge: LtCol Kevin C. Harris, USMC.

Convening Authority: Commanding Officer, Combat Logistics Battalion 15, Combat Logistics Regiment 17, 1st Marine Logistics Group, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: LtCol W.N. Pigott, Jr., USMC.

For Appellant: CAPT Ross L. Leuning, JAGC, USN.

For Appellee: LCDR Clay G. Trivett, Jr., JAGC, USN; Maj David N. Roberts, USMC.

24 July 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 special court-martial, convicted the appellant, pursuant to his pleas, of three specifications of willfully disobeying a commissioned officer, and one specification each of willfully disobeying a noncommissioned officer, destroying and damaging non-military

property, breach of the peace, disorderly conduct, false official statement, and breaking restriction, in violation of Articles 90, 91, 107, 109, 116, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 890, 891, 907, 909, 916, and 934. The appellant was sentenced to confinement for 135 days, reduction to pay grade E-1, forfeitures of \$978.00 pay per month for four months, and a bad-conduct discharge. The convening authority approved the sentence as adjudged but, pursuant to a pretrial agreement, suspended all confinement in excess of time served.

The appellant avers that the portion of the sentence extending to a bad-conduct discharge is inappropriately severe. Upon *de novo* review, 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 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)). We independently determine the appropriateness of the sentence in each case we affirm. See *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005).

The multiple offenses in this case occurred over several months, during which the command attempted through various progressive measures to apply command authority to control the appellant's often volatile behavior stemming in part from marital difficulties. The issuance of various orders were ignored by the appellant at will, with other notable episodes listed above, to the point that pretrial confinement on the present charges essentially proved to be the only means of curtailing the misconduct. We find the approved sentence is appropriate for this offender and his offenses. Granting sentence relief at this point would be engaging in an act of clemency, a prerogative reserved to the convening authority, and we decline to do so. *Healy*, 26 M.J. at 395-96.

We hold that the assigned error is without merit and 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 occurred. Arts. 59(a) and 66(c), UCMJ.

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

For the Court

R.H. TROIDL
Clerk of Court