

**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.

**JEREMIAH J. GRIFFIN
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201100646
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 8 September 2011.

Military Judge: Col Michael B. Richardson, USMC.

Convening Authority: Commanding Officer, Marine Aviation Logistics Squadron 39, Marine Aviation Group 39, 3d Marine Aircraft Wing, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: Col Philip J. Betz, Jr., USMC.

For Appellant: CAPT Brent G. Filbert, JAGC, USN.

For Appellee: Capt Crista D. Kraics, USMC.

30 March 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 one specification of conspiracy and one specification of larceny in violation of Articles 81 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 881 and 921. The military judge sentenced the appellant to confinement for 6 months, reduction to pay

grade E-1, forfeiture of \$978.00 pay per month for 5 months, a fine of \$5000.00, and a bad-conduct discharge. The convening authority (CA) approved the adjudged sentence.¹

In his sole assignment of error, the appellant claims his sentence is inappropriately severe when compared to that of his co-conspirator, Corporal Vice.

The facts adduced at the appellant's court-martial indicate that Corporal Vice approached the appellant with the idea of entering into a sham marriage in order to receive Basic Allowance for Housing (BAH). The appellant and Corporal Vice entered into the sham marriage and both were found guilty of conspiracy to commit larceny and larceny of an amount of \$31,723.00. She was sentenced to, and her CA approved, a bad-conduct discharge, confinement for 3 months, reduction to pay grade E-1, and forfeiture of \$978.00 pay per month for 5 months. The appellant's sentence differs from Corporal Vice's in that he was adjudged and his CA approved 3 more months confinement and a \$5000.00 fine.

Sentence Disparity and Appropriateness

The appropriateness of a sentence generally should be determined without reference or comparison to sentences in other cases. *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985). We are not required to engage in comparison of specific cases "except in those rare instances in which sentence appropriateness can be fairly determined only by reference to disparate sentences adjudged in closely related cases." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (quoting *Ballard*, 20 M.J. at 283). The burden is upon the appellant to make that showing. *Id.* If the appellant satisfies his burden, the Government must then establish a rational basis for the disparity. *Id.* "Closely related" cases are those that "involve offenses that are similar in both nature and seriousness or

¹ In his recommendation to the CA, the staff judge advocate (SJA) noted two companion cases, *United States v. Corporal Joseph Garner* and *United States v. Corporal Ashley N. Vice*. Although noting the companion cases, the SJA's recommendation (SJAR) did not identify the offenses of which Corporals Garner and Vice were found guilty or the sentences awarded and approved in their cases. The requirement to note companion cases is contained in the Manual of the Judge Advocate General, Judge Advocate General Instruction 5800.7E § 0151a(5) (Ch-2, 16 Sep 2008). The purpose of this requirement is to ensure that the CA makes an informed decision when taking his action. We recommend that in addition to simply noting the case, the SJAR, at a minimum, include the findings and sentence of the companion cases.

which arise from a common scheme or design." *United States v. Kelly*, 40 M.J. 558, 570 (N.M.C.M.R. 1994); see also *Lacy*, 50 M.J. at 288 (examples of closely related cases include co-actors in a common crime, servicemembers involved in a common or parallel scheme, or "some other direct nexus between the servicemembers whose sentences are sought to be compared").

We find that the appellant has demonstrated that his case is closely related to Corporal Vice's and his approved sentence is highly disparate. It is clear that the appellant and Corporal Vice participated in a common scheme to defraud the Marine Corps and, for his part, the appellant relieved twice the amount of confinement as Corporal Vice and a \$5000 fine.

Although different military judges heard the respective cases, we find no rational basis for the sentence disparity. First, it was Corporal Vice who proposed this criminal endeavor. Second, the appellant and Corporal Vice were the same rank and members of different commands both when they entered into the fraudulent marriage and when they were sentenced. Third, they each stole the same amount of money and pled guilty to identical offenses. Fourth, the appellant's service record contains no adverse material and his proficiency and conducts marks reflect those of an above average Marine. Finally, the appellant was the first to accept responsibility for his misconduct and the first to agree to cooperate with the Government and testify in related cases.

Conclusion

We conclude that the findings and the sentence as modified are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ. The findings are affirmed. We affirm only so much of the sentence as provides for confinement for 3 months, reduction to pay grade E-1, forfeiture of \$978.00 pay per month for 5 months, and a bad-conduct discharge.

For the Court

R.H. TROIDL
Clerk of Court