

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

**Before  
B.L. PAYTON-O'BRIEN, J.A. MAKSYM, R.Q. WARD  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**DAKOTA L. HERRELL  
ENGINEMAN THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201200131  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 22 November 2011.

**Military Judge:** CDR Colleen Glaser-Allen, JAGC, USN.

**Convening Authority:** Commander, Navy Region, Mid-Atlantic,  
Norfolk, VA.

**Staff Judge Advocate's Recommendation:** CDR F.D. Hutchison,  
JAGC, USN.

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

**For Appellee:** CAPT James B. Melton, JAGC, USN; Maj David N.  
Roberts, USMC.

**19 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 general court-martial convicted the appellant, pursuant to his pleas, of aggravated assault, a violation of Article 128, Uniform Code of Military Justice, 10 U.S.C. § 928. The appellant was sentenced to confinement for 18 months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved

the sentence as adjudged but, pursuant to a pretrial agreement, suspended confinement in excess of 15 months.

The appellant advances one assignment of error: that his approved sentence to 15 months confinement is unjustifiably severe. 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 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)).

While at sea on USS LEYTE GULF (CG 55), during flight operations while the ship was illuminated with only red interior lighting, the appellant engaged in an unprovoked violent assault on a female shipmate. In a darkened passageway, the appellant, donned with a flash hood over his head revealing only his eyes, awaited a passerby. In his possession was a second flash hood that the appellant had specially outfitted with a four to five foot long quarter-inch nylon rope through the neck of the hood. When his unsuspecting female shipmate, Sonar Technician Surface Third Class KL, came around the corner of the passageway, the appellant threw the flashhood over her head, pulled the rope and yanked KL backward down two passageways and over two kneeknockers. While KL was being dragged down the passageway, the rope tightened around her head and face. The appellant stopped his assault only when the victim commenced screaming.

After *de novo* review of the entire record, we find that the sentence is appropriate for this offender and his offense. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. Granting sentence relief at this point would be to engage in clemency, a prerogative reserved for the CA, and we decline to do so. *Healy*, 26 M.J. at 395-96.

We conclude that the findings and sentence are correct in law and fact and that no error was committed that was materially prejudicial to the substantial rights of the appellant. Arts.

59(a) and 66(c), UCMJ. We affirm the findings and sentence approved by the CA.

For the Court

R.H. TROIDL  
Clerk of Court