

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

**Before  
B.L. PAYTON-O'BRIEN, R.G. KELLY, R.Q. WARD  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**STEPHEN K. HOLDREN  
AVIATION ORDNANCEMAN FIRST CLASS (E-6), U.S. NAVY**

**NMCCA 201200243  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 2 February 2012.

**Military Judge:** CDR Douglas Barber, JAGC, USN.

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

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

**For Appellant:** LT Toren Mushovic, JAGC, USN.

**For Appellee:** LT Ian MacLean, JAGC, USN.

**17 October 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 general court-martial convicted the appellant, pursuant to his pleas, of attempted rape of a child under the age of 12, rape of a child under the age of 12, aggravated sexual abuse of a child under the age of 12, indecent liberties with a child under the age of 12, forcible sodomy with a child under the age of 12, and possession of child pornography, in violation of Articles 80, 120, 125, and

134, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 920, 925, and 934. The appellant was sentenced to confinement for life, reduction to pay grade E-1, total forfeiture of pay and allowances, and a dishonorable discharge. The convening authority (CA) disapproved the adjudged forfeitures, but approved the remaining sentence as adjudged. Pursuant to a pretrial agreement, the CA suspended all confinement in excess of 22 years. Further, in an act of clemency, the CA waived automatic forfeitures for the benefit of the appellant's dependents for six months.

The appellant assigns two errors: (1) that this court should reassess his sentence because it is not uniform with sentences in other courts-martial; and (2) the confinement awarded by the military judge was inappropriately severe given the nature of the offenses, the character of the offender, and the fact that the confinement is highly disparate in closely related cases.<sup>1</sup> We disagree.

After careful consideration of the record of trial and the pleadings of the parties, we conclude that the findings and 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.

### **Factual Background**

The appellant engaged in extensive sexual abuse of his biological daughter on dozens of occasions spanning a four-year time period. The victim was seven years old when the abuse began, which then continued until she was 11 years old. During the time period she was abused by the appellant, the victim lived with her mother because her parents were divorced. The appellant had visitation arrangements with his ex-wife, and committed the sexual abuse during periods of visitation with his daughter. The appellant's abuse of his daughter was committed in various places, e.g., in the appellant's apartment, in the appellant's car, in hotels, on a Disney cruise ship, and at the appellant's parents' house. The appellant's abuse of his daughter consisted of attempted rape, digital penetration, cunnilingus, fellatio, using indecent language in her presence, taking photographs of her genitalia, buttocks, and breasts, and showing her adult pornography.

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<sup>1</sup> Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Simultaneous with the abuse he was committing against his daughter, the appellant sexually abused his half-sister's daughter while on a family vacation at the appellant's parents' house in Alabama. The appellant's abuse of his niece consisted of digital penetration and taking photographs of her genitalia. The appellant's niece was 10 years old when the acts against her occurred.

Furthermore, in August 2010, while serving on deployment in Afghanistan, the appellant possessed two USB flashdrives<sup>2</sup> containing videos and images of child pornography. While on this deployment, the appellant had access to the internet and searched for and downloaded child pornography in the form of multiple videos and hundreds of images. He saved these videos and images to the flashdrives and kept them in his personal housing unit.

### **Sentence Appropriateness**

The appellant asserts that his sentence to confinement for life is disparate when compared to sentences in closely related cases. He also contends that his confinement is too severe based upon his character and the nature of the offenses.<sup>3</sup>

While clemency is the prerogative of the convening authority, our duty is to affirm only those sentences which we deem fair and just. In this regard, we engage in a review that gives "'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)). We determine sentence appropriateness generally without reference or comparison to other cases. *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985).

We are not required to engage in comparisons 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." *Id.* "Closely related" cases are those that "involve offenses that are similar in both nature and seriousness or which arise from a

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<sup>2</sup> A "USB" flashdrive is a data storage device that includes flash memory with an integrated Universal Serial Bus (USB) interface.

<sup>3</sup> The appellant cites to no specifics in either regard.

common scheme or design." *Id.* Examples of closely related cases include coactors in a common crime, service members involved in a common or parallel scheme or "some other direct nexus between the servicemembers whose sentences are sought to be compared." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999). The appellant bears the burden of making the showing that any cited cases are closely related. *Id.*

The appellant cites to 13 cases over the last 37 years that he contends are closely related.<sup>4</sup> While the cases cited by the appellant all involve child molestation, the record in this case reveals that these cases are unrelated to the appellant's actions. The mere similarity of offenses is insufficient to demonstrate that the cases are closely related. *United States v. Washington*, 57 M.J. 394, 401 (C.A.A.F. 2002); *United States v. Swan*, 43 M.J. 788, 793 (N.M.Ct.Crim.App. 1995). The appellant has failed to satisfy his burden of showing that his case and the cases he cites are closely related.

Next, the appellant asks us to reassess his sentence to confinement because it is not uniform with sentences for similar offenses in other courts-martial. The appellant's invites us to consider the same 13 cited cases as a basis for determining that his sentence to confinement for life is not uniform for similar offenses in other cases. We note that the appellant's brief contains reference to the charges and sentences in three of the cases, but only case citations to the remaining 10 cases. In those 10 cases, we note the sentences range from four to 40 years. We recognize that many factors bear on sentencing. We are not persuaded that the appellant suffered a miscarriage of justice in this case because other offenders received lesser punishments. See *United States v. Sexton*, 201000195, 2010 CCA LEXIS 91, unpublished op., (N.M.Ct.Crim.App. 12 Aug 2010) (holding confinement for life in a child sex abuse case appropriate under the circumstances). Our system allows for some disparity "provided each military accused is sentenced as an individual." *United States v. Durant*, 55 M.J. 258, 261-62 (C.A.A.F. 2001) (citations omitted).

When allowing for the nature and seriousness of the offenses and the character of the offender, after careful consideration of the record of trial, the matters submitted in extenuation and mitigation, and the appellant's record of service, we are convinced that justice was done and that the

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<sup>4</sup> Although he does not state so in his brief, we assume the appellant's claim is that the cases he cites are closely related because they involve offenses that are similar in both nature and seriousness.

appellant received the punishment he deserves. *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

The heinous nature of the appellant's sexual abuse of two young girls, one which was his own biological daughter and the other his niece, is well-documented in this record. The repugnant abuse he committed against these two young girls will have life-long consequences. We note the appellant only ceased his misconduct when he was reported by his young victims.

After considering the entire record, we conclude that while a sentence of confinement for life is a severe punishment and on the highest end of the spectrum, it is an appropriate punishment for this offender and his offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395; *Snelling*, 14 M.J. at 268.

### **Conclusion**

The findings of guilty and the sentence as approved by the convening authority are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court