

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

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

**UNITED STATES OF AMERICA**

**v.**

**RANDALL L. NACE, JR.  
MASTER SERGEANT (E-8), U.S. MARINE CORPS**

**NMCCA 201100425  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 5 May 2011.

**Military Judge:** LtCol David Jones, USMC.

**Convening Authority:** Commanding Officer, III MEF  
Headquarters Group, III Marine Expeditionary Force,  
MarForPac, Camp Foster, Okinawa, Japan.

**Staff Judge Advocate's Recommendation:** Maj Matt Fahringer,  
USMC.

**For Appellant:** CAPT Johnathan Bryan, JAGC, USN.

**For Appellee:** LCDR Gregory R. Dimler, JAGC, USN; LT  
Benjamin J. Voce-Gardner, JAGC, USN.

**29 February 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 failing to obey a lawful order from a superior commissioned officer, one specification of failing to obey a lawful general order, and one specification of wrongful use of a

Schedule II controlled substance, methamphetamine, in violation of Articles 90, 92, and 112a of the Uniform Code of Military Justice, 10 U.S.C. §§ 890, 892, and 912a. The approved sentence was confinement for 45 days, reduction to pay grade E-1, and a bad-conduct discharge.<sup>1</sup>

The appellant's sole assignment of error contends that his sentence was unjustly severe.

We have considered the record of trial and the parties' pleadings. We conclude that the findings and sentence are correct in law and fact and that there are no errors materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

### **Sentence Appropriateness**

This court reviews the appropriateness of the sentence *de novo*. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005). Sentence appropriateness involves the judicial function of ensuring 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). 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)).

The appellant's offenses include the use of methamphetamine on 100 occasions over a four and a half year period. Record at 32-36. Moreover, the appellant's drug use resulted in involvement by Japanese law enforcement personnel. *Id.* at 105. Additionally, during an important exercise, the appellant failed to appear as directed by his superior commissioned officer. *Id.* at 86. His inattention created difficulties for the command and affected the exercise. *Id.* We have carefully considered the appellant's 17 years of honorable service to the Marine Corps, including combat related service in Iraq. However, the appellant was a senior staff noncommissioned officer in a position of leadership on overseas duty when he used a Schedule II substance. In light of the nature of his offenses, we do not find the sentence to be inappropriately severe.

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<sup>1</sup> To the extent that the convening authority's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543, (N.M.Ct.Crim.App. 2011).

**Conclusion**

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

For the Court

R.H. TROIDL  
Clerk of Court