

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

**Before
J.R. PERLAK, J.K. CARBERRY, R.E. BEAL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**EMILIANO SANTOS III
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201200078
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 30 November 2011.

Military Judge: Col Deborah M. McConnell, USMC.

Convening Authority: Commanding Officer, 1st Battalion, 2d Marine Regiment, 2d Marine Division, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Maj J.T. Leggett, USMC.

For Appellant: Maj S. Babu Kaza, USMCR.

For Appellee: CDR Kevin L. Flynn, JAGC, USN; Capt David N. Roberts, USMC.

19 June 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 unauthorized absence terminated by apprehension, four specifications of theft, and two specifications of wrongful appropriation, in violation of Articles 86 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 921. The military judge sentenced the appellant to

be confined for ninety days, reduction to pay grade E-1, a fine of \$982.50 and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

The appellant's sole assigned error is that a punitive discharge in this case is inappropriately severe. Having considered the parties' pleadings and the record of trial, we find the findings and 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 therefore affirm the findings and the approved sentence.

Under Article 66(c), UCMJ, we may only approve a sentence which we find appropriate after we have independently reviewed the case and considered the nature and seriousness of the offenses and the character of the offender. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). Our determination of sentence appropriateness under Article 66(c), UCMJ, requires us to analyze the record as a whole to ensure that justice is done and that the accused receives the punishment he deserves. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

The appellant's offenses are serious; he wrongfully appropriated a fellow Marine's debit cards on two separate occasions and stole, through a series of unauthorized withdrawals, a sum amounting to more than \$900.00. Additionally, the appellant absented himself from his unit for more than 50 days until he was apprehended by local law enforcement. We have carefully considered the entire record of trial, the nature and seriousness of these offenses, the matters presented by the appellant in extenuation and mitigation, and the appellant's military service. We find the sentence to be appropriate for this offender and the offenses committed. Granting additional sentence relief at this point would be engaging in clemency, a prerogative reserved for the convening authority, and we decline to do so. *See Healy*, 26 M.J. at 395-96.

Conclusion

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

For the Court

R.H. TROIDL
Clerk of Court