

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

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

**UNITED STATES OF AMERICA**

**v.**

**HOWARD A. WOODALL  
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201100554  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 15 July 2011.

**Military Judge:** CAPT D. Jacques Smith, JAGC, USN.

**Convening Authority:** Commanding General, Training Command,  
Quantico, VA.

**Staff Judge Advocate's Recommendation:** LtCol J.L. Gruter,  
USMC.

**For Appellant:** CAPT Stephen White, JAGC, USN.

**For Appellee:** CDR K.L. Flynn, JAGC, USN; LT Benjamin J.  
Voce-Gardner, JAGC, USN.

**17 January 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 violating a lawful general order, larceny of military property, reckless endangerment, and unlawful possession of a firearm in violation of Articles 92, 121, and 134, Uniform Code of Military Justice,

10 U.S.C. §§ 892, 921, and 934.<sup>1</sup> The appellant was sentenced to confinement for two years, reduction to pay grade E-1, total forfeitures, and a dishonorable discharge. The convening authority approved the sentence as adjudged, but suspended all confinement in excess of one year pursuant to a pretrial agreement.

The appellant argues in his first assignment of error that Specification 1 of Charge IV, reckless endangerment, fails to state an offense because the terminal element of Article 134 was not alleged. In his second assignment of error, he argues that a sentence including a dishonorable discharge is inappropriately severe. We disagree on both counts.

### **Background**

The appellant's offenses all center on his possession of drug paraphernalia and various weapons and accessories at his home in Fredericksburg, Virginia. The appellant was an ammunition technician stationed at Marine Corps Base (MCB) Quantico. One day while working at the armory, the appellant saw ninety-six M-16 magazines sitting outside unattended. The appellant knew these magazines were not abandoned property; nonetheless he picked them up, still in their original packaging, placed them in the trunk of his car, and took them home for his own personal use.

On another occasion, the appellant purchased four fragmentation grenades from another Marine at MCB Quantico. The appellant knew at the time of the purchase that the grenades were not properly registered pursuant to statutory requirements. He kept them in an ammo can at his residence.

Sometime later, state and military law enforcement agents obtained a search warrant of the appellant's home for the fragmentation grenades. During execution of the warrant, sundry items associated with the cultivation of marijuana were seized. Also seized were an SKS rifle and a 12-gauge shotgun. Both weapons were located in open view on the floor of the appellant's master bedroom closet. Both were loaded; each with a round in the chamber. Both were also easily accessible to the appellant's toddler child who was present in the home during the search. Neither weapon's safety was engaged and no other device safeguarded the weapons from the child.

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<sup>1</sup> The unlawful possession of a firearm not registered to himself was charged under clause 3 of Article 134 as a violation of 26 U.S.C. 5861(d).

### **Failure to State an Offense**

The appellant argues that he lacked notice of which offense he must defend against because the reckless endangerment specification did not allege whether his conduct was prejudicial to good order and discipline, or of a nature to bring discredit upon the armed forces. *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011). The appellant's case is significantly distinguishable from *Fosler* because: 1) the appellant did not challenge the adequacy of the specification at trial; 2) he pled guilty to the specification; 3) the military judge ensured the appellant understood the terminal elements of the offense; 4) the appellant provided a factual basis to establish he was guilty of conduct of a nature to bring discredit upon the armed forces; and 5) the appellant stipulated that his conduct was "of a nature to bring discredit to the Armed Forces because the public could perceive that all Marines are careless with firearms, especially in circumstances involving children." Prosecution Exhibit 5 at 3-4. Accordingly, we resolve the assigned error against the appellant. *United States v. Hackler*, \_\_\_ M.J. \_\_\_, No. 201100323, 2011 CCA LEXIS 371 (N.M.Ct.Crim.App. 22 Dec 2011).

### **Inappropriately Severe Sentence**

We review sentence appropriateness *de novo*. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). 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). Such analysis requires "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and 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 nature and circumstances of the appellant's offenses were very serious and paint a picture of a reckless individual. In particular, the unlawful possession of fragmentation grenades in combination with the storage of loaded weapons and drug cultivation equipment not only recklessly endangered the appellant's child, it also set the scene for a potentially explosive encounter with law enforcement. Considering also the theft of military property, we conclude his sentence was entirely appropriate.

**Conclusion**

The findings and the sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court