

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

**Before  
M.D. MODZELEWSKI, C.K. JOYCE, J.E. STOLASZ  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**STEVEN D. BERGEVIN  
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201200522  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 22 August 2012.

**Military Judge:** Col Philip J. Betz, Jr., USMC.

**Convening Authority:** Commanding Officer, MWSS 372, MAG 39, 3d MAW, Camp Pendleton, CA.

**Staff Judge Advocate's Recommendation:** LtCol K.C. Harris, USMC.

**For Appellant:** CAPT Randy C. Bryan, JAGC, USN.

**For Appellee:** Maj William C. Kirby, USMC; LCDR Keith B. Lofland, JAGC, USN.

**28 May 2013**

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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 drunken operation of a motor vehicle and one specification of aggravated assault in violation of Articles 111 and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 911 and 928. The appellant was sentenced to confinement for 10 months, forfeiture of \$994.00 pay per month for 10 months, reduction to

pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the adjudged sentence, and except for the punitive discharge, ordered it executed. Pursuant to the pretrial agreement, the CA suspended all confinement in excess of six months.

The appellant asserts that his approved sentence is inappropriately severe.<sup>1</sup> After careful examination of the record of trial, and the pleadings of the parties we are satisfied that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred.

### **Severity of Sentence**

The appellant asserts his sentence, specifically the bad-conduct discharge, is inappropriately severe. He argues that a bad-conduct discharge is too harsh a punishment when balancing his criminal conduct against an individualized consideration of his outstanding service. Appellant's Brief of 21 Mar 2013 at 3.

Article 66(c), UCMJ, requires us to independently review the sentence of each case within our jurisdiction and only approve that part of the sentence which we find should be approved. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We are required to analyze the record as a whole to ensure that justice is done and that the appellant receives the punishment he deserves. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). In making this important assessment, we consider the nature and seriousness of the offenses, as well as the character of the offender, keeping in mind that courts of criminal appeals are tasked with determining sentence appropriateness, as opposed to bestowing clemency, which remains the prerogative of the CA. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The appellant's record, his outstanding service, and his acceptance of responsibility are factors we consider very carefully when weighing his argument that a bad-conduct discharge is too severe a punishment. Conversely, we note that the appellant's approved sentence was less than the jurisdictional maximum at a special court martial. We are also cognizant that the appellant chose to get behind the wheel after consuming two forty-ounce bottles of malt liquor. He lost control of his vehicle, crossed the double yellow line, and

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

crashed head on into another vehicle. The other driver was in a medically induced coma for three days and suffered severe injuries, including a cerebral hemorrhage, fractured vertebrae, multiple rib fractures, skull lacerations, and a dislocated left arm requiring surgery. Record at 39.

The appellant's acceptance of responsibility for his actions is a positive step toward his rehabilitation. His service in uniform is impressive as attested by his numerous character witnesses. However, it does not change the consequences of his decision to drink and drive, and the impact this decision had, and continues to have, on the life of the victim. We find the sentence to be appropriate for this offender and his offenses.

### **Conclusion**

The findings and the sentence, as approved by the CA, are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court