

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

**Before  
R.Q. WARD, J.R. MCFARLANE, K.M. MCDONALD  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**MICHAEL C. HUGHES  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201300226  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 11 March 2013.

**Military Judge:** Maj Nicholas Martz, USMC.

**Convening Authority:** Commanding Officer, 2d Marines, 2d Marine Division, Camp Lejeune, NC.

**Staff Judge Advocate's Recommendation:** Maj J.N. Nelson, USMC.

**For Appellant:** CAPT Ross Leuning, JAGC, USN.

**For Appellee:** CDR James Carsten, JAGC, USN.

**17 October 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 violating a lawful general order and four specifications of cruelty and maltreatment, in violation of Articles 92 and 93, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 893. The military judge sentenced the appellant to forty-five days confinement, sixty days hard labor without confinement, sixty days restriction, forfeiture of \$1,000.00 pay

per month for a period of two months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) disapproved the sixty days hard labor without confinement and the sixty days restriction. The CA approved the remaining sentence as adjudged.

The appellant's sole assignment of error is that the bad-conduct discharge is unjustifiably severe "[b]ased upon Appellant's strong record of service, his honorable combat service, his ability to contribute to the Marine Corps, and his remorse for his offenses[.]"<sup>1</sup> Appellant's Brief of 12 Aug 2013 at 3. We disagree. After carefully considering the record of trial, and the submissions of the parties, we are convinced 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. Arts. 59(a) and 66(c) UCMJ.

### **Background**

The appellant was a fire team leader who used his rank, position, and prior combat experience to compel two Marines in his fire team to shower naked together while the appellant took a picture of them doing so. Additionally, he coerced one of these subordinate Marines to simulate sex acts with a wooden phallus on approximately thirty occasions. On another occasion, he made one Marine expose himself while the second Marine was told to paint a smiley face on the other Marine's genitals - which was captured by a webcam and broadcast to others on the Internet.

### **Sentence Appropriateness**

The appellant contends that a bad-conduct discharge is inappropriately severe under the circumstances of his case. We disagree.

This court reviews the appropriateness of the sentence *de novo*. *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005). In accordance with Article 66(c), UCMJ, a military appellate court "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves. *United States v.*

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

*Healy*, 26 M.J. 394, 395 (C.M.A. 1988). This requires "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)).

After review of the entire record, we find that the sentence is appropriate for this appellant and his offenses. *Baier*, 60 M.J. at 384-85; *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. In addition to considering the nature and seriousness of the specific offenses, we have carefully considered the individual characteristics of the appellant. This includes his combat deployments, overall performance and recognition he received while in the Marine Corps. Considering the entire record, we conclude that justice was done and the appellant received the punishment he deserves. Granting sentence relief at this point would be to engage in clemency, a prerogative reserved for the CA, and we decline to do so. *Healy*, 26 M.J. at 395-96.

#### **Conclusion**

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

For the Court

R.H. TROIDL  
Clerk of Court