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

Before
F.D. MITCHELL, J.A. FISCHER, M.K. JAMISON
Appellate Military Judges

UNITED STATES OF AMERICA

v.

LEE E. PARRETT
MACHINIST'S MATE FIRST CLASS (E-6), U.S. NAVY

NMCCA 201300197
SPECIAL COURT-MARTIAL

Sentence Adjudged: 22 March 2013.
Military Judge: CAPT John K. Waits, JAGC, USN.
Convening Authority: Commander, Navy Region Southeast, Naval Air Station, Jacksonville, FL.
Staff Judge Advocate's Recommendation: CDR M.C. Holifield, JAGC, USN.
For Appellant: CAPT Stephen White, JAGC, USN.
For Appellee: LT Lindsay P. Geiselman, JAGC, USN.

17 December 2013

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 committing an indecent act, in violation of Article 120(k), Uniform Code of Military Justice, 10 U.S.C. § 920(k) (2007). The military judge sentenced the appellant to one hundred and ten days confinement, reduction to pay grade E-3, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

The appellant's sole assignment of error is that the approved sentence is unjustifiably severe "[i]n view of (the) [a]ppellant's prior exemplary military record," and considering the appellant was convicted of "a single specification of indecent act resulting from consensual intercourse in (the) [a]ppellant's own home after a New Year's Eve Party on a theory that other persons sleeping in the house may have inadvertently observed (the) [a]ppellant[.]"[1] Appellant's Brief of 22 Jul 2013 at 4. 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

On the evening of 31 December 2012, the appellant and his roommate, Petty Officer KW, hosted a New Year's Eve party at their residence in Fernandina Beach, Florida. Several members of the appellant's command, USS GEORGIA (SSGN 729), attended along with their significant others. Lieutenant (LT) JC went to the party accompanied by his girlfriend, Ms. HF, and her friend, Ms. BR. The party goers conversed, ate food, and sat around a bonfire outside while drinking alcoholic beverages. At some point several people went swimming in their underwear. Some of the others present saw Ms. HF return to the appellant's residence while in her underwear.

Later that night, Ms. HF fell asleep in the living room on the appellant's couch. Eventually, everyone else at the party either went home or went to sleep in the appellant's house. LT JC slept in the living room on a sofa adjacent to the one on which Ms. HF was sleeping. Ms. BR slept on a chair in the living room next to Ms. HF. At some point in the early morning, Ms. BR awoke to see and hear the appellant and Ms. HF having sexual intercourse in the living room while LT JC remained asleep on the sofa.

Sentence Appropriateness

[1] This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

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. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). 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. 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 offense. *Baier*, 60 M.J. at 384-85; *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. The appellant engaged in sexual intercourse with Ms. HF in an open living room, in the presence of Ms. BR, and with LT JC, a commissioned officer from the appellant's command and Ms. HF's boyfriend, sleeping a few feet away. The appellant admitted his conduct was grossly vulgar, obscene, and repugnant to common propriety and tended to excite sexual desire or deprave morals with respect to sexual relations. The particular circumstances also serve to aggravate the appellant's offense. In addition to considering the nature and seriousness of the specific offense, we have carefully considered the individual characteristics of the appellant. Considering the entire record, we conclude that justice was done and the appellant received the punishment he deserves by affirming the sentence as approved by the CA. 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