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

Before
R.Q. WARD, B.L. PAYTON-O'BRIEN, J. R. MCFARLANE
Appellate Military Judges

UNITED STATES OF AMERICA

v.

BRYAN A. RALLS
SERGEANT (E-5), U.S. MARINE CORPS

NMCCA 201300070
SPECIAL COURT-MARTIAL

Sentence Adjudged: 29 October 2012.
Military Judge: Maj Nicholas Martz, USMC.
Convening Authority: Commanding Officer, First Marine Corps District/Eastern Recruiting Region, Garden City, New York.
Staff Judge Advocate's Recommendation: LtCol R.G. Palmer, USMC.
For Appellant: CAPT Bree Ermentrout, JAGC, USN.
For Appellee: LT Philip Reutlinger, JAGC, USN.

27 June 2013

OPINION OF THE COURT

PER CURIAM:

A military judge sitting as a special court-martial found the appellant guilty, pursuant to his pleas, of three specifications of violating a lawful general order or regulation,[1] in violation of Article 92, Uniform Code of Military Justice, 10 U.S.C. § 892. The military judge sentenced the

[1] These specifications alleged violation of three different general orders or regulations, however the regulation at issue here is U.S. Navy Regulation, Art. 1165 (1990), which prohibits fraternization. Appellate Exhibit VII.

appellant to three months confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged and, in accordance with the pretrial agreement, suspended all confinement in excess of 30 days.

The appellant now argues that the military judge failed to establish an adequate factual predicate for the appellant's guilty plea to fraternization in that the providence inquiry did not establish that the appellant's conduct was prejudicial to good order and discipline or of a nature to be service discrediting. After consideration of the pleadings and the record of trial, we find no error materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

Factual Background

At the time of his offenses, the appellant was a newly married Marine Sergeant (E-5), assigned as a recruiter at Recruiting Station Buffalo, New York. It was in that capacity that the appellant met Ms. BEW, a young woman interested in joining the Marine Corps. Although the appellant was not Ms. BEW's assigned recruiter, he assisted her in entering the Delayed Entry Program. Shortly thereafter, their relationship became more intimate. They exchanged sexual text messages and Ms. BEW sent the appellant sexually provocative pictures of herself. This behavior continued until Ms. BEW left for boot camp. After Ms. BEW graduated from recruit training, the relationship began anew. Once again the appellant and now-Lance Corporal (LCpl) BEW exchanged sexual text messages and LCpl BEW sent the appellant sexually explicit pictures of herself, including pictures wherein she was partially clothed in her dress uniform.

During the providence inquiry, the appellant admitted to carrying on an inappropriate relationship with LCpl BEW. The military judge reviewed the Navy Regulation and its prohibitions in detail with the appellant. The appellant acknowledged that he understood the regulation and confirmed that his relationship with LCpl BEW violated its terms.

As a result of her inappropriate relationship with the appellant, LCpl BEW received nonjudicial punishment. Further facts relevant to disposition of this case are developed below.

Providence Inquiry

A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion. *United States v. Inabinette,* 66 M.J. 320, 322 (C.A.A.F. 2008). A decision to accept a guilty plea will be set aside only where the record of trial shows a substantial basis in law or fact for questioning the plea. *Id*. Our determination focuses on the providence of the plea and not the sufficiency of the evidence, *United States v. Barton*, 60 M.J. 62, 64 (C.A.A.F. 2004), for the law requires only that "the factual circumstances as revealed by the [appellant] objectively support that plea," *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980).

The appellant argues that the military judge failed to elicit a sufficient factual basis to support a finding that he violated United States Navy Regulation, Article 1165 (1990), which prohibits relationships that are unduly familiar, do not respect the differences in rank or grade, and are prejudicial to good order and discipline or of a nature to bring discredit upon the naval service. We disagree.

During the providence inquiry, the military judge explained each element of the offense, and provided the appellant with the associated definitions. The appellant stated that he understood each element, that he understood the conduct prohibited by the order, and that the elements correctly described what he did. Record at 22. Later, the military judge focused the appellant's attention on the portion of the regulation that required the relationship to be "prejudicial to good order and discipline or of a nature to bring discredit upon the Naval service . . . ." *Id*. at 32. Again, the appellant stated the he understood the regulation and believed he violated it. When asked to explain why he believed that, the appellant spoke of the difference in rank between a Marine Sergeant and a LCpl, and the fact that he and LCpl BEW were exchanging sexually explicit pictures and text messages. *Id*. at 32. The stipulation of fact goes further and admits that the relationship the appellant had with LCpl BEW, "bred intimate emotional connections and confidences. . . . [that] calls into question his objectivity, undermines his authority, and compromises the chain of command." Prosecution Exhibit 1 at 3.

Additionally, during the providence inquiry regarding the appellant's violation of a different order that specifically precluded him from having a relationship with recruits in the Delayed Entry Program, the appellant stated that he, "as a recruiter, represent[s] the Marine Corps in the eyes of the

public and the public's image of the Marine Corps would be tainted if the public knew that [the appellant] was engaging in a non-professional relation – personal relationship with an applicant and member of the Delayed Entry Program." Record at 23-24.

While the appellant was speaking about his violation of a different order at the time, we believe that his words are no less applicable to the orders violation being questioned today. As a noncommissioned officer assigned to recruiting duty, the appellant represented the Marine Corps, and his actions of exchanging sexually explicit pictures and text messages with a former recruit fresh out of boot camp were clearly "of a nature to be service discrediting" as defined by Navy Regulation 1165. Appellate Exhibit II at 2.

Under the facts of this case, we find that the appellant's responses objectively supported a violation of Navy Regulation, Article 1165. Accordingly, we do not find a substantial basis in law or fact for questioning the appellant's guilty plea. *See Inabinette*, 66 M.J. at 322.

Conclusion

Accordingly, the findings of guilty and the sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court