

**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.

**JOHNNY R. RICHARDS
CHIEF GUNNER'S MATE (E-7), U.S. NAVY**

**NMCCA 201300332
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 29 April 2013.

Military Judge: CDR Douglas Barber, JAGC, USN.

Convening Authority: Commander, Navy Region Mid-Atlantic,
Norfolk, VA.

Staff Judge Advocate's Recommendation: LCDR S.J. Gawronski,
JAGC, USN.

For Appellant: LtCol Richard Belliss, USMCR.

For Appellee: CDR Christopher L. VanBrackel, JAGC, USN; Maj
Crista Kraics, USMC.

30 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-martial¹
convicted the appellant, pursuant to his pleas, of four

¹ We note that these specifications were originally referred to a general court-martial ("GCM"). However, as part of a pretrial agreement, the convening authority withdrew the charges from a GCM and re-referred the same charges to a special court-martial.

specifications of attempting to communicate indecent language to a child under the age of sixteen, in violation of Article 80 Uniform Code of Military Justice, 10 U.S.C. § 880. The military judge sentenced the appellant to one year confinement, reduction to pay grade E-1, and a bad-conduct discharge. A pretrial agreement had no effect on the sentence. The convening authority approved the sentence as adjudged, and, except for the punitive discharge, ordered it executed.

The appellant's sole assignment of error is that the bad-conduct discharge is unjustifiably severe based on the fact that the appellant had "an otherwise honorable career spanning over twenty-one years of service."² 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 accessed an online forum for pre-teen and teenage girls in which he pretended to be a 15-year-old Japanese female named "Risa" and Risa's 17-year-old neighbor and girlfriend "Pam." Under this guise, the appellant befriended a person he thought was a 14-year-old girl and convinced her to move their conversations to Yahoo! Messenger. On four distinct occasions, the appellant communicated with this girl by writing in the type of broken English he believed a native Japanese speaker may use. On each occasion, the appellant would use sexually graphic language and discuss performing sexual acts together. However, the person with whom the appellant was communicating was in actuality a Naval Criminal Investigative Service special agent who was posing as the 14-year-old female.

Sentence Appropriateness

The appellant contends that a bad-conduct discharge is unjustifiably 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). A military appellate court "may affirm only such findings of guilty and the sentence or such part or amount of the sentence

² Appellant's Brief of 21 Oct 2013 at 1.

as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." Art. 66(c), UCMJ. 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 offenses. *Baier*, 60 M.J. at 384-85; *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. The appellant was a married Navy chief with over 21 years of service when he, under the guise of being a teenage girl, repeatedly communicated sexually graphic language to a person he believed was a 14-year-old girl. Considering the nature and seriousness of a this conduct, weighed against appellant's 21 years of military service, overall performance, and recognition he received in the U.S. Navy, we conclude that justice was done and the appellant received the punishment he deserved 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 convening authority, and we decline to do so. *Healy*, 26 M.J. at 395-96.

Conclusion

The findings and the sentence as approved by the convening authority are affirmed.

For the Court

R.H. TROIDL
Clerk of Court