

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

**Before
J.R. PERLAK, M.D. MODZELEWSKI, J.E. STOLASZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**WILLIAM M. TRAVIS
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201300076
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 18 October 2012.

Military Judge: Maj Nicholas A. Martz, USMC.

Convening Authority: Commanding General, 2d Marine
Division, Camp Lejeune, NC.

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

For Appellant: CDR Christopher J. Geis, JAGC, USN.

For Appellee: CDR Kevin L. Flynn, JAGC, USN; LT Philip S.
Reutlinger, JAGC, USN.

30 May 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 two specifications of wrongfully distributing oxycodone and one specification of larceny in violation of Articles 112a and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 912a and 921. The appellant was sentenced to confinement for seven months, reduction to pay-grade E-1 and a bad-conduct discharge. The

military judge made a clemency recommendation that the convening authority (CA) suspend the bad-conduct discharge in light of the appellant's combat deployments Afghanistan and Iraq. The CA approved the adjudged sentence. As a matter of clemency, the CA suspended execution of the bad-conduct discharge for a period of twelve months from the date of his action. Pursuant to a pretrial agreement, the CA deferred automatic forfeitures until the date of his action, and then waived automatic forfeitures for six months provided the appellant maintained an allotment to his wife. The appellant asserts that his approved sentence is inappropriately severe.

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 is inappropriately severe given: (1) his documented post-traumatic stress disorder (PTSD), (2) mental, emotional and physical problems resulting from his combat experiences, (3) his exemplary service on the battlefield, and (4) the non-violent and relatively minor offenses to which he pled guilty. Appellant's Brief of 22 Apr 2013 at 13-14.

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 is the prerogative of the CA. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The appellant's record, including his deployments to Iraq and Afghanistan, his exposure to combat situations while serving in those two locations, his resulting mental and physical ailments, and his exemplary service in leading and protecting

other Marines while in combat are all factors we carefully consider when attempting to determine whether a sentence is appropriate. We balance those factors with the offenses for which he was convicted to make our determination of sentence appropriateness.

The record establishes that the appellant served in two different war zones with valor and distinction, and returned from the wars in Iraq and Afghanistan with physical ailments, and, perhaps more significantly, mental ailments which continue to impact his everyday living.

Conversely, we note that appellant's approved sentence was considerably less than the jurisdictional maximum at a special court martial. In addition, the military judge, having considered the appellant's combat deployments, and mental and physical infirmities, as well as his criminal conduct, made a clemency recommendation to the CA to suspend the bad-conduct discharge. The CA, having the same evidence to consider, followed this recommendation and granted clemency by suspending execution of the bad-conduct discharge for twelve months. In both instances, the appellant received fair and balanced consideration as to an appropriate sentence based on all the evidence available.

Finally, we note the appellant pled guilty to distributing oxycodone on two separate occasions and larceny of Government property. Contrary to the appellant's claim, we do not consider them minor offenses and do not find a sentence including a bad-conduct discharge inappropriately severe.

Conclusion

The findings and the approved sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court