

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

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

UNITED STATES OF AMERICA

v.

**CHRISTOPHER S. WARP
FIRST LIEUTENANT (O-2), U.S. MARINE CORPS**

**NMCCA 201200111
GENERAL COURT-MARTIAL**

Sentence Adjudged: 18 November 2011.

Military Judge: Col Deborah McConnell, USMC.

Convening Authority: Commander, U.S. Marine Corps Forces
Command, Norfolk, VA.

Staff Judge Advocate's Recommendation: LtCol R.R. Posey,
USMC.

For Appellant: CAPT Johnathan Bryan, JAGC, USN.

For Appellee: CDR Brendan Curran, JAGC, USN; Maj David N.
Roberts, USMC.

17 January 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 general court-martial, convicted the appellant, pursuant to his pleas, of three specifications of violating Article 134, Uniform Code of Military Justice. Specifically, the appellant was convicted of violating three separate federal statutes under clause (3) of Article 134: 18 U.S.C. § 922(o)(1) unlawful possession of a machine gun; 26 U.S.C. § 5861(d) unlawful possession of a

firearm not registered to him in the National Firearms Registration and Transfer Record; and 26 U.S.C. 5861(k), unlawfully possessing a firearm brought into the United States. The appellant was sentenced to confinement for 70 days, forfeiture of \$1,000.00 pay per month for 12 months, and a dismissal. Pursuant to the pretrial agreement, the convening authority (CA) disapproved the adjudged forfeitures and waived automatic forfeitures for the benefit of the appellant's family member.¹

The appellant raises two assignments of error: (1) that the CA failed to consider clemency matters submitted by the civilian defense counsel, and (2) that the approved sentence was unjustifiably severe.

After careful examination of the record of trial and the pleadings of the parties, we are satisfied that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred.

Clemency Matters

In his first assignment of error, the appellant contends that the CA erred in failing to consider a clemency letter submitted by his civilian defense counsel on 25 February 2011. The initial staff judge advocate's recommendation (SJAR) was prepared on 13 February 2011. Detailed defense counsel acknowledged receipt on that same day. On 29 February 2012, the staff judge advocate (SJA) prepared an addendum specifically referencing the civilian defense counsel's clemency letter as follows:

"On 25 February 2012, civilian defense counsel submitted matters for your consideration pursuant to references (b) and (c), [R.C.M. 1106 and 1105 respectively], specifically requesting that the Dismissal be disapproved and First Lieutenant Warp be allowed to remain on active duty. In the alternative, it is requested that the Dismissal be disapproved and First Lieutenant Warp be administratively separated with an other than honorable characterization of service."

¹ To the extent that the convening authority's action purported to execute the bad-conduct discharge it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009).

Enclosure (1) to the addendum was a proposed convening authority's action, and enclosure (4) was the civilian defense counsel's 25 February 2012 clemency letter. The addendum directed the CA to review enclosures (2) - (5),² and then sign enclosure (1) the proposed CA's action.

The CA's action, dated 1 March 2012, states that "[p]rior to taking action in this case I considered the results of trial, the record of trial and the recommendation of the staff judge advocate."

We note that neither the UCMJ nor the Rules for Courts-Martial require the CA to state in his action what materials were reviewed in reaching a final decision. *United States v. Stephens*, 56 M.J. 391, 392 (C.A.A.F. 2002). The appellant cites *Stephens* in his brief, and acknowledges that it "would appear to frustrate Appellant's plea in this case." Appellant's Brief of 8 Jun 2012 at 6. We agree. Contrary to the appellant's contention, we are convinced that the CA considered all of the documents referenced in the SJA's 29 February 2012 addendum including the clemency letter prior to finalizing his action. We conclude that the assigned error is without merit.

Severity of Sentence

The appellant also contends his sentence, in particular the dismissal, is unjustifiably severe. He argues that extenuation and mitigation evidence favors disapproving the dismissal. Appellant's Brief at 10. He cites to his combat deployments, outstanding service both as an enlisted Marine and as a commissioned officer, cooperation with authorities, and his family. *Id.* at 11-13.

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

² The enclosures referenced were: (2) SJAR with enclosures; (3) SJAR service receipt; (4) 25 February 2012 clemency letter; and (5) record of trial.

appropriateness, as opposed to bestowing clemency, which is the prerogative of the convening authority. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The appellant's record and years of outstanding service are factors we consider very carefully when considering his argument that a dismissal is too severe a punishment. Conversely, we note that the appellant faced a maximum punishment of 20 years confinement³ for the offenses to which he plead, and further note the seriousness of possessing automatic weapons brought into the United States and possessing an unregistered firearm. We further note the disturbing factual scenario of a Marine officer receiving automatic weapons as gifts from enlisted Marines. There is no suggestion of emotional or mental distress or other malady which might account for this serious lapse in judgment. The appellant's lapse in judgment occurred twice: once with the acquisition of the AK-47 machine gun, and the second time with the acquisition of the M16/AR-15. After carefully considering the entire record, we are convinced that justice was done and the appellant received the punishment he deserved.

Conclusion

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

For the Court

R.H. TROIDL
Clerk of Court

³ The military judge merged Specifications 1 and 2 of Charge III for sentencing, thereby reducing the maximum confinement from 30 years to 20 years.