

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

**Before
J.R. PERLAK, J.R. MCFARLANE, J.E. STOLASZ
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**ZANE J. WILLIAMSON
ENGINEMAN FIREMAN (E-3), U.S. NAVY**

**NMCCA 201300134
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 7 December 2012.

Military Judge: CDR John Maksym, JAGC, USN.

Convening Authority: Commander, U.S. Naval Forces Marianas, Guam.

Staff Judge Advocate's Recommendation: CDR R.J. Vavra, JAGC, USN.

For Appellant: LtCol Richard Belliss, USMCR.

For Appellee: CDR Gregory R. Dimler, JAGC, USN; LT Philip S. Reutlinger, JAGC, USN.

30 July 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 violating a lawful written order, one specification of violating a lawful general regulation, and one specification of assault consummated by a battery, in violation of Articles 92 and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 928, respectively. The military judge

sentenced the appellant to 345 days of confinement, reduction to pay grade E-1, to pay a fine of \$7,500.00, and a bad-conduct discharge. The convening authority approved the sentence as adjudged and, except for the punitive discharge, ordered it executed.

We have examined the record of trial, the appellant's sole assignment of error alleging that his sentence was inappropriately severe, and the Government's response. We conclude that the findings and sentence are correct in law and fact and that no error was committed that was materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

Sentence Appropriateness

The appellant argues that he was not unjustly enriched by his crimes and thus a fine of \$7,500.00 is inappropriate. We disagree.

Fines may be imposed even in the absence of unjust enrichment. *United States v. Stebbins*, 61 M.J. 366, 372 (C.A.A.F. 2005). We have a duty under Article 66(c), UCMJ, to independently review the sentence of each case within our jurisdiction and only approve that part of a sentence which we find should be approved. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). Our determination of sentence appropriateness under Article 66(c), UCMJ, requires us to analyze the record as a whole to ensure that justice is done and that the accused 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. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

Here, the nature and seriousness of the appellant's offenses weigh against our granting relief. The appellant not only violated a lawful order on numerous occasions by having sex on board USS EMORY S. LAND (AS 39), but he also repeatedly violated the military protective order (MPO) that was issued when he was accused of raping and assaulting the shipmate with whom he had been having sexual relations. These violations started the day after the order was issued, and were both frequent and flagrant, with the appellant having intimate, face-to-face contact with the subject of the MPO on multiple occasions - the last of which culminated in the assault

consummated by a battery charge. Additionally, the appellant pled guilty to an orders violation that consisted of his having logged on to the same victim's Navy e-mail account without her permission and sending a fake e-mail under her name suggesting that the then-pending rape allegations against the appellant were untrue.

After carefully considering the entire record of trial and the nature and seriousness of these offenses, we find the sentence to be appropriate for this offender and the offenses committed. Granting additional sentence relief at this point would be engaging in clemency, a prerogative reserved for the convening authority, and we decline to do so. *See Healy*, 26 M.J. at 395-96.

Supplemental Court-Martial Order Correction

As originally charged, Specification 3 under Charge III, assault consummated by a battery, alleged that the appellant "did . . . unlawfully strike J.S. on the stomach by punching J.S. in the stomach with his fist, unlawfully strike J.S. in the mouth with his hand by putting his hand over her mouth, and unlawfully squeeze J.S. on the neck with his hands thereby choking her with his hands." The appellant entered pleas by exception, striking the words "unlawfully strike J.S. on the stomach by punching J.S. in the stomach," and also striking "and unlawfully squeeze J.S. on the neck with his hands thereby choking her with his hands." Record at 16. Accordingly, the appellant's guilty plea was limited to the remaining words: "did . . . unlawfully strike J.S. in the mouth with his hand by putting his hand over her mouth." *Id.* The convening authority, in promulgating his action, failed to capture the full scope of the excepted language by not indicating that the words "by punching J.S. in the stomach" had been excepted. Service members are entitled to records that correctly reflect the results of court-martial proceedings. *See United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). We will order corrective action in our decretal paragraph.

Conclusion

Accordingly, we affirm the findings of guilty and the sentence as approved by the convening authority. The supplemental court-martial order will reflect that as to Specification 3 under Charge III, the appellant pled and was found guilty except for the words "unlawfully strike J.S. on the stomach by punching J.S. in the stomach," and the words "and

unlawfully squeeze J.S. on the neck with his hands thereby
chocking her with his hands."

For the Court

R.H. TROIDL
Clerk of Court

Chief Judge PERLAK participated in the decision of this case
prior to detaching from the court.