

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

**Before
M.D. MODZELEWSKI, E.C. PRICE, M.G. MILLER
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**KALLEB M. WILSON
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201300122
GENERAL COURT-MARTIAL**

Sentence Adjudged: 14 December 2012.

Military Judge: LtCol Nicole K. Hudspeth, USMC.

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

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

For Appellant: CAPT Bree A. Ermentrout, JAGC, USN.

For Appellee: CDR James E. Carsten, 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 general court-martial, convicted the appellant, pursuant to his pleas, of attempted murder in violation of Article 80, Uniform Code of Military Justice, 10 U.S.C. § 880. The appellant was sentenced to confinement for 23 years, total forfeiture of pay and allowances, reduction to pay grade E-1, and a dishonorable

discharge. The convening authority approved the sentence as adjudged but, pursuant to a pretrial agreement, suspended all confinement in excess of 10 years.¹

The appellant asserts that the sentence was 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.

Sentence Severity

The appellant argues that we should reassess his sentence because it is inappropriately severe in comparison to another unrelated case similar in nature and seriousness and in light of his remorse and acceptance of responsibility. Appellant's Brief of 21 May 2013.

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 that 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. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). In determining sentence appropriateness, we are mindful that it is distinguishable from clemency, which is a bestowing of mercy on the accused and is the prerogative of the convening authority. *Healy*, 26 M.J. at 395.

The appropriateness of a sentence generally should be determined without reference or comparison to sentences in other cases. *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985). We are not required to engage in comparison of specific cases "except in those rare instances in which sentence appropriateness can be fairly determined only by reference to disparate sentences adjudged in closely related cases." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (quoting *Ballard*, 20 M.J. at 283). The appellant has the burden to make

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).

that showing. *Id.* If the appellant satisfies his burden, the Government must then establish a rational basis for the disparity. *Id.* "Closely related" cases are those that "involve offenses that are similar in both nature and seriousness or which arise from a common scheme or design." *United States v. Kelly*, 40 M.J. 558, 570 (N.M.C.M.R. 1994); see also *Lacy*, 50 M.J. at 288 (listing examples of closely related cases to include co-actors in a common crime, service members involved in a common or parallel scheme, or "some other direct nexus between the servicemembers whose sentences are sought to be compared").

The appellant pled guilty to the attempted murder of his wife and faced punishment that included confinement for life. During his providence inquiry, the appellant admitted that he agreed to pay a person whom he believed to be a contract killer the sum of \$12,000.00 to murder his wife. He stated that he did so for two purposes: to receive the proceeds from a life insurance policy and to be with his girlfriend. He was convinced that his life would be easier if he didn't have to deal with a divorce, and issues with child custody or child support.

The appellant met with a person whom he believed to have organized crime connections, but who was in fact an undercover law enforcement agent. He expressed his desire to have his wife killed and then discussed payment arrangements, the amount, and where and how to kill her. During a subsequent meeting, the appellant provided the undercover agent with pictures of his wife and her residence. He also provided detailed information about his wife's schedule, typical movements, and a map layout of her residence and adjacent streets. Even after the undercover agent asked the appellant if he really wanted to follow through with the plan and reminded him of the permanence of this decision, the appellant ordered the murder.

For comparison purposes, the appellant cites a case involving similar charges of attempted murder by hire, noting that the defendant in that case received only 42 months confinement, substantially less confinement than his adjudged and approved sentence. The appellant asserts that the disparity in the respective sentences compels reassessment of his sentence. We disagree. The appellant has failed to sustain his burden of demonstrating a "direct nexus" between the cases or that the cases are "closely related," and we decline his invitation to compare the respective sentences in determining the appropriateness of his sentence. *Kelly*, 40 M.J. at 570.

After carefully considering the entire record of trial, the nature and seriousness of these offenses, the matters presented by the appellant in extenuation and mitigation, and the appellant's military service, we find the sentence to be appropriate for this offender and his offenses. *Baier*, 60 M.J. at 384-85; *Healy*, 26 M.J. at 395; *Snelling* 14 M.J. at 268.

Conclusion

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

For the Court

R.H. TROIDL
Clerk of Court