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

Before
K.J. BRUBAKER, A.Y. MARKS, T.J. STINSON
Appellate Military Judges

UNITED STATES OF AMERICA

v.

ERIK J. CARRILLO
MACHINIST'S MATE THIRD CLASS (E-4), U.S. NAVY

NMCCA 201500104
GENERAL COURT-MARTIAL

Sentence Adjudged: 13 November 2014.
Military Judge: CAPT Robert B. Blazewick, JAGC, USN.
Convening Authority: Commander, Navy Region Southeast, Naval Air Station, Jacksonville, FL.
Staff Judge Advocate's Recommendation: CDR N.O. Evans, JAGC, USN.
For Appellant: Maj Jason L. Morris, USMCR.
For Appellee: CDR James E. Carsten, JAGC, USN; LT James M. Belforti, JAGC, USN.

17 September 2015

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, found the appellant guilty, pursuant to his pleas, of attempted murder, two specifications of disrespect towards a superior commissioned officer, insubordinate conduct toward a superior petty officer, fleeing apprehension, three specifications of aggravated assault, and one specification of disorderly conduct, in violation of Articles 80, 89, 91, 95, 128, and 134, Uniform

Code of Military Justice, 10 U.S.C. §§ 880, 889, 891, 895, 928, and 934. The adjudged sentence included five years' confinement, total forfeitures, reduction to pay-grade E-1, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged; however, pursuant to a pretrial agreement, the CA suspended all confinement in excess of 48 months.

On appeal, the appellant alleges that his sentence of five years' confinement is inappropriately severe and warrants relief pursuant to Article 66, UCMJ.[1] After careful examination of the record of trial and the pleadings of the parties, we disagree. The findings and sentence are correct in law and fact, and we find no error materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

Background

Early on the morning of 23 January 2014, the appellant and the rest of the crew of USS GETTYSBURG (CG 64) were pierside on a liberty port visit at Jebel Ali, Dubai, United Arab Emirates. The appellant had returned to the ship after drinking 12 to 15 12-ounce beers pierside over the course of the previous evening and was intoxicated but not unruly. Out of the blue and without any apparent provocation, the appellant told a shipmate he needed to stab someone.[2] The appellant went to his berthing and apparently acquired a Gerber knife. He then proceeded to the aft missile deck, where he encountered Lieutenant (LT) AS returning from liberty. Without provocation, the appellant put his arm around LT AS, asking him, "are you with us or against us?"[3] Then the appellant pulled LT AS's head down while simultaneously driving the open blade of the Gerber knife up and into LT AS's neck. The resulting injury required emergency treatment at a Dubai hospital and left LT AS and his chain of command fearing for his life.

The appellant, believing he had killed LT AS, fled the ship. He approached a van on the pier, banged on its window, and entered through the front passenger door. The appellant brandished the Gerber knife and told the driver, a Pakistani national contracted to provide liberty transportation, to drive.

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[1] This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

[2] Record at 31.

[3] Prosecution Exhibit 1 at 2.

The driver fled the van in fear, and the appellant quickly abandoned the van and continued down the pier on foot. The driver, seeing the van was unoccupied, reentered the van and tried to drive away. Within moments, the appellant returned, re-entered the van, and again brandished the knife and demanded the driver drive.

Navy security personnel blocked the van's path, and the Pakistani driver again fled the van, taking the keys with him. Master-at-Arms Second Class MW ordered the appellant from the van at gunpoint. The appellant complied but then tried to flee apprehension by climbing a concrete barrier.

While being escorted back to the ship, the appellant accosted his command master chief, commanding officer, and executive officer, and threatened their lives or the lives of their family members. He shouted at members of the crew, assembled on the quarterdeck, that he had saved them all.

The appellant's behavior early that morning prompted an inquiry into his mental responsibility and capacity pursuant to RULE FOR COURTS-MARTIAL 706, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.). The neuropsychologist who performed the exam documented no psychiatric diagnosis and concluded the appellant was able to appreciate the criminality of his conduct and control it at the time of the incidents. During presentencing, the neuropsychologist testified that the appellant's history without mental health issues or violence made his sudden violent behavior "truly an anomaly."[4]

Sentence Severity

The appellant argues that his sentence to confinement for five years, with the fifth year of confinement suspended per the pretrial agreement, was inappropriately severe given the nature of the offense weighed against the character of the appellant and his low risk for future violence. 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). In accordance with Article 66(c), UCMJ, this court "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." "Sentence appropriateness involves the judicial

[4] Record at 167.

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). That analysis requires "individualized consideration of the particular accused on the basis of the nature and seriousness of the offense and character of the offender." *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (internal quotation marks and citation omitted). Factors include "the circumstances surrounding the offense, [the accused's] acceptance or lack of acceptance of responsibility for his offense, and his prior record." *United States v. Aurich*, 31 M.J. 95, 97 n.* (C.M.A. 1990). Determining sentence appropriateness does not include granting clemency. *Healy*, 26 M.J. at 395.

We have reviewed the entire record and recognize that the appellant's isolated, but extended, violent crime spree of 23 January 2014 is incongruous with every aspect of his prior life and service. Nevertheless, the appellant has pled guilty to attempting to murder an officer for no apparent reason. The appellant attacked without provocation, and the injury he inflicted was no accident. Good fortune spared LT AS's life. After stabbing the officer, the appellant continued to brandish the open blade of the Gerber knife as he doggedly attempted to escape the secured area adjacent to the pier. Even while physically restrained, the appellant individually addressed his commanding officer, executive officer, and command master chief with a threat to murder them or members of their families. Although unprecedented and uncharacteristic of the appellant, there remains an unexplained outburst of indiscriminate violence with real, negative consequences. LT AS is forever changed, having lost some of his ability to trust his shipmates. The crew of USS GETTYSBURG reeled with shock and grief, temporarily raising concerns in the commanding officer's mind about their ability to accomplish their mission.

Further, although not raised on appeal, we have thoroughly considered the issue of mental responsibility. First, the inquiry into the appellant's mental responsibility pursuant to R.C.M. 706 yielded no mental disease or defect. Second, in his Stipulation of Fact, the appellant denied suffering from any severe mental disease or defect and stipulated that, "although there is evidence of both delusional and erratic behavior, [he] was able to appreciate the nature and quality and the wrongfulness of his actions."[5] Instead, the appellant accepted

[5] PE 1 at 1.

responsibility for his actions. Third, the appellant's trial defense counsel consciously and unequivocally relinquished any affirmative defense of lack of mental responsibility. During the providence inquiry, trial defense counsel advised the military judge that he had "thoroughly investigated [RCM 916(k)] as a possible affirmative defense, to include consultation with a very well-respected forensic psychologist whose report [the appellant] will be offering in sentencing . . . [a]nd through both the consultation and the 706 and a review of the evidence, the defense is confident that the lack of mental responsibility is not an applicable defense here."[6] Finally, the military judge then asked the appellant if he disagreed with anything his trial defense counsel said regarding the potential defense, and the appellant responded he did not. The record contains no substantial basis in fact or law for questioning the appellant's plea. *See United States v. Moon*, 73 M.J. 382, 386 (C.A.A.F. 2014).

Evidence regarding the appellant's mental state was offered during presentencing for mitigation and extenuation. The appellant presented significant and uncontroverted evidence of his respectful, amiable, and peaceful character. A report from the forensic psychologist who evaluated the appellant attributed his behavior to a brief psychotic break but could offer no causal explanation.[7] Both the forensic psychologist and the neuropsychologist who conducted the R.C.M. 706 evaluation found no risk factors for future violent behavior. In light of the possible life sentence without the possibility of parole the appellant faced, the adjudged sentence of five years' confinement and pretrial agreement suspending all confinement beyond 48 months reflect substantial credit for this evidence in extenuation and mitigation.

Weighing the gravity of the appellant's offenses against his otherwise unblemished character and service and his acceptance of responsibility, we decline to find his sentence inappropriate.

Court-Martial Order

The recitation of the court-martial findings in General Court-Martial Order (CMO) No. 07-15 contains a potentially confusing clerical error. Inserted before the correct plea and finding for Specification 2 of Charge VII is a duplicate plea

[6] Record at 34-35.

[7] Defense Exhibit B at 6-7.

and conflicting findings. As the appellant is entitled to accurate court-martial records, we order the necessary corrective action in our decretal paragraph. *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998).

Conclusion

The findings and the sentence as approved by the CA are affirmed. The supplemental CMO shall reflect the following as to Specification 2 of Charge VII: "PLEA: NOT GUILTY. FINDING: WITHDRAWN" with the existing explanatory footnote.

For the Court

R.H. TROIDL
Clerk of Court