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

Before
J.A. FISCHER, D.C. KING, B.T. PALMER
Appellate Military Judges

UNITED STATES OF AMERICA

v.

MATTHEW D. GONZALEZ
CORPORAL (E-4), U.S. MARINE CORPS

NMCCA 201500151
GENERAL COURT-MARTIAL

Sentence Adjudged: 10 February 2015.
Military Judge: Col D.J. Daughtery, USMC.
Convening Authority: Commanding General, 1st Marine Aircraft Wing, Okinawa, Japan.
Staff Judge Advocate's Recommendation: Maj J.M. Hackel, USMC.
For Appellant: CDR Suzanne Lachelier, JAGC, USN.
For Appellee: CAPT Dale O. Harris, JAGC, USN; LT James E. 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:

Pursuant to his pleas, a military judge sitting as a general court martial convicted the appellant of one specification of sexual assault, in violation of Article 120, Uniform Code of Military justice, 10 U.S.C. § 920. The military judge convicted the appellant, contrary to his pleas, of an additional specification of sexual assault and one specification

of making an indecent recording, in violation of Articles 120 and 120c, UCMJ, 10 USC §§ 920 and 920c, respectively.

The appellant was sentenced to reduction to pay grade E-1, total forfeiture of pay and allowances, confinement for fourteen years, and a dishonorable discharge. The convening authority approved the sentence as adjudged but, pursuant to the pretrial agreement, suspended confinement in excess of sixty months.

On appeal, the appellant alleges that a dishonorable discharge is inappropriately severe. 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 appellant's substantial rights. Arts. 59(a) and 66(c), UCMJ.

Background

While stationed at Marine Corps Air Station Iwakuni, Japan, the appellant was drinking with fellow Marines, including Lance Corporal (LCpl) J, at the base bowling alley. The parties returned to the appellant's barracks room where the appellant began making drinks for LCpl J. Eventually, LCpl J, who considered the appellant "a friend,"[1] became so intoxicated that he lost consciousness in the appellant's room. When the party broke up, several junior Marines attempted to get LCpl J back to his own rack, but the appellant told them to leave LCpl J in the appellant's room. The Marines complied and over the course of the ensuing hours the appellant penetrated LCpl J's anus with his tongue, finger and penis. The appellant also placed LCpl J's penis in his mouth and thrust his penis into LCpl J's mouth, all while LCpl J was incapable of consenting.

The assault resulted in LCpl J receiving counseling, medications, and deprived him of feelings of safety in his work and living spaces. In addition, LCpl J was "constantly in fear of being labeled and treated differently,"[2] drank to the point of requiring in-patient treatment, suffered a loss of trust in the Marine Corps and Marine noncommissioned officers (NCOs), and continues to reel from the impact of the sexual assault:

> It has been 14 months since the sexual assault, and I'm still trying to deal with what happened to me.

[1] Record at 141.

[2] *Id.* at 144.

> Sobriety has been a struggle for me. The night of the sexual assault still haunts me today. A day does not go by that I don't have a flashback about that night or relive the feeling of [the appellant's] body and hands on me.[3]

In the course of investigating the assault against LCpl J, investigators came across a video of the appellant engaged in anal intercourse with Corporal (Cpl) S. Cpl S had no idea he had been anally sodomized by the appellant, whom Cpl S counted as his "personal friend,"[4] until the investigators showed him the video. As a result of this crime, Cpl S was unable to redeploy to Iwakuni and experienced feelings of "guilt . . . weakness . . . and inadequacy."[5] Cpl S testified to his sense of betrayal:

> I considered the accused to be not only a friend, a co-worker, and a work out partner, but I considered him my brother. For nearly two years we were close. He knew my flaws, my family, any girl issues, and he was there for me when distance or work became stressful. Now during an investigation, in which I actively supported him, I discover he had violated me, and furthermore, acted under the guise of friendship until the day I was told. I felt betrayed. I now second-guess the intentions [of] friends and of people I would normally consider family.[6]

Because Cpl S cannot sleep well, he turned to alcohol to "shut out [the] thoughts, memories, or emotions" related to the assault.[7]

The appellant made an unsworn statement that described physical, emotional, and sexual abuse when he was a child, as well as the traumatic effect of losing his twin brother to suicide while the appellant was in pretrial confinement. He also took responsibility for his actions and extended apologies to his victims.

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[3] *Id.*

[4] *Id.* at 110.

[5] Prosecution Exhibit 16 at 1.

[6] *Id.*

[7] *Id.*

Sentence Severity

The appellant now argues that a dishonorable discharge is an inappropriate sentence when considered in light of the appellant's "horrific family sexual and physical abuse, [and] childhood neglect."[8] We disagree.

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." This court reviews the appropriateness of a sentence *de novo*. *United States v. Roach*, 66 M.J. 410, 413 (C.A.A.F. 2008). Sentence appropriateness involves the judicial 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), which 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).

While we are sympathetic to the appellant's mitigation and extenuation evidence, we are nonetheless presented with a Marine NCO who plied a junior Marine with alcohol and orchestrated events to ensure that Marine was left incapacitated and unprotected in the appellant's room. Once alone with LCpl J, the appellant then sexually assaulted him in a manner that continued to "haunt" LCpl J when he testified some 16 months later. The appellant took similar advantage of Cpl S, with similar impact on that victim, even making a video recording of that assault.

Conclusion

Having considered the nature of these offenses and the character and background of the offender, we are convinced that a dishonorable discharge is appropriate. The findings and sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court

[8] Appellant's Brief at 9.