

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

**Before  
K.J. BRUBAKER, M.C. HOLIFIELD, A.Y. MARKS  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**BRANDON D. LITTLE  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201500020  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 8 October 2014.

**Military Judge:** Col D.M. McConnell, USMC.

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

**Staff Judge Advocate's Recommendation:** LtCol K.S. Woodard,  
USMC.

**For Appellant:** CAPT Glenn Gerding, JAGC, USN.

**For Appellee:** CAPT Dale O. Harris, JAGC, USN; LT Ann E.  
Dingle, JAGC, USN.

**25 June 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, convicted the appellant, pursuant to his plea, of one specification of manslaughter, in violation of Article 119, Uniform Code of Military Justice, 10 U.S.C. § 919. The appellant was sentenced to three years of confinement, reduction to pay grade E-1, forfeiture of all pay and allowances, and a dishonorable discharge. Pursuant to a pretrial agreement, the

convening authority (CA) suspended all confinement in excess of 24 months.

In his sole assignment of error, the appellant asserts the dishonorable discharge is inappropriately severe.

After carefully considering the record of trial, as well as the submissions of the parties, we conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

### **Background**

On 8 April 2014, the appellant, through his own culpable negligence, shot and killed a fellow Marine, Lance Corporal (LCpl) MB. The two of them had just completed a shift as gate sentries aboard Camp Lejeune, North Carolina. The appellant was armed with an M4 rifle, which he was instructed to maintain in "condition 3" -- magazine inserted, chamber empty, bolt forward, weapon on safe, and ejection port cover closed -- unless deadly force was authorized.

The appellant admitted that during slow traffic periods at the gate, he would -- in knowing violation of weapons handling procedures -- play with the safety on his weapon, flicking it between "safe" and "semi." Following their shift, the appellant and LCpl MB entered the gatehouse. Although he had been instructed to clear his weapon only at the Provost Marshal Office armory, the appellant instead took it upon himself to do so in the gatehouse.

LCpl MB was seated behind the appellant facing the appellant's back. With his rifle slung across his chest, the appellant sat down and while attempting to pull the charging handle to the rear of his weapon inadvertently chambered a round. The appellant was unaware, having failed to check, that a magazine was still inserted and the safety was not on "safe." Realizing he was in an unsafe position to clear his weapon, the appellant stood up to unslung his rifle, which became wrapped around his walkie-talkie. As he attempted to disentangle his weapon, the appellant lost positive control of his weapon, allowing it to point behind him in the direction of LCpl MB. With his finger in the trigger well, the appellant's weapon discharged as he tried to regain control of his rifle. LCpl MB was struck in the chest and, although the appellant immediately went to his aid, LCpl MB died as a result of his wound.

## Analysis

We review the appropriateness of a sentence *de novo*. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). Under 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." Determining 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). This requires an "'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) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). While this court has a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *Healy*, 26 M.J. at 395-96.

The appellant argues that a dishonorable discharge is inappropriately severe, especially given that the offense was an unintentional act. We disagree.

There is no doubt this was an unintentional act for which the appellant is deeply shaken and remorseful. Further, LCpl MB's family was stunningly gracious in their forgiveness and compassion for the appellant. Yet this was no mere accident. As the appellant admitted, his actions extended beyond simple carelessness and instead constituted a wanton disregard for the foreseeable consequences of repeatedly disregarding the most basic of weapons handling procedures.<sup>1</sup> The cost of this culpable disregard was the life of a young Marine with a bright future, beloved both by his family and the Marines with whom he served.

We have given individualized consideration to this particular appellant, including his otherwise solid record of service, the nature and seriousness of the offense, and all other matters contained in the record of trial. We are

---

<sup>1</sup> The appellant not only attempted to clear his weapon in an unauthorized area, but violated virtually all of the weapons safety rules: (1) Never point your weapon at anything you do not intend to shoot; (2) Treat every weapon as if it were loaded; (3) Keep your finger straight and off the trigger until you are ready to fire; and, (4) Keep your weapon on safe until you intend to fire. The appellant well knew these rules.

satisfied that justice is done and that the appellant received the punishment he deserved.

**Conclusion**

The findings and the sentence as approved by the CA are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court