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.

EMANUEL M. YOUNG
CORPORAL (E-4), U.S. MARINE CORPS

NMCCA 201500030
GENERAL COURT-MARTIAL

Sentence Adjudged: 19 September 2014.
Military Judge: Col M.B. Richardson, USMC.
Convening Authority: Commanding General, 1st Marine Logistics Group, Camp Pendleton, CA.
Staff Judge Advocate's Recommendation: LtCol E.J. Peterson, USMC.
For Appellant: Maj John J. Stephens, USMC.
For Appellee: CDR Christopher J. Geis, 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 general court-martial convicted the appellant, pursuant to his pleas, of attempted premeditated murder, rape, maiming, and kidnapping, in violation of Articles 80, 120, 124, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 920, 924, and 934. The military judge sentenced the appellant to confinement for life with the possibility of parole, reduction to pay grade E-1, forfeiture of all pay and

allowances, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged and, in accordance with the pretrial agreement, suspended all confinement in excess of 48 years. Except for the punitive discharge, the CA ordered the sentence executed.

In his one assignment of error, the appellant argues that the 48-year sentence is inappropriately severe in light of his mental health problems and drug use at the time the crimes were committed.[1] After careful examination of the record of trial and the pleadings of the parties, we disagree. We note, however the need to modify the terms of the suspension of confinement, and will do so in our decretal paragraph. So modified, we find the findings and the sentence are correct in law and fact, and we find no errors materially prejudicial to the substantial rights of the appellant remain. Arts. 59(a) and 66(c), UCMJ.

Background

Both the appellant and his victim, Lance Corporal (LCpl) E.N.H., were assigned to 1st Supply Battalion, Combat Logistics Regiment 15, on board Camp Pendleton, California. While the appellant worked in the same section as LCpl E.N.H., they knew each other solely in a professional context.

On the night of 17 January 2014, and into the early morning hours of the 18th, the appellant was at his home in base housing smoking "spice," a manufactured form of marijuana.[2] At some point during the morning of the 18th the appellant placed a butcher knife, boot laces, a condom, and several socks in his jacket. He then began driving around the base.

Eventually he arrived at the barracks located in 22 Area. The appellant was familiar with these barracks, as he had conducted room inspections there for junior Marines in his unit, including LCpl E.N.H.

At approximately 0800, the appellant entered the building and walked to LCpl E.N.H.'s room. He knocked on her door and asked whether she had called him at 0230 that morning. The appellant knew she had not called him, and asked her only as a ruse to gain access to her room. After LCpl E.N.H. denied she

[1] This assignment of error is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). The appellant also requests that this court affirm a sentence that includes a maximum of 40 years' confinement.

[2] Record at 123-24.

had telephoned him, the appellant asked if her roommate was in the room and was told that she was not. He then asked LCpl E.N.H. if he could use her bathroom. She allowed the appellant to enter her room and go into the bathroom. When the appellant emerged, he had drawn the butcher knife from his jacket.

As the appellant approached with the knife, LCpl E.N.H. reached out to defend herself and was stabbed in the hand. The appellant then covered her mouth with his hand and instructed her to be quiet or he would hurt her. In an attempt to silence LCpl E.N.H., the appellant stuffed a sock into her mouth. LCpl E.N.H. spit it out and attempted to gain sympathy by engaging in conversation with the appellant.

The appellant then attempted to tie LCpl E.N.H. with the boot laces he had brought, eventually making LCpl E.N.H. tie herself. The appellant raped LCpl E.N.H. for approximately five minutes. When he finished, he stood next to the bed for three to five minutes. During this time, he formed the intent to kill LCpl E.N.H. in order to cover up evidence of the rape. He took LCpl E.N.H. into the bathroom and made her stand in the shower, telling her that he wanted to make sure she did not run away. After telling LCpl E.N.H. to "say hi to my dad for me,"[3] the appellant began to stab her repeatedly.

The appellant stabbed LCpl E.N.H. eighteen times. LCpl E.N.H. sustained a near fatal cut on her neck that barely missed her carotid artery. She sustained multiple defensive wounds on her hands and arms, which severed several tendons. The appellant also stabbed her repeatedly in her torso, perforating her bowels. LCpl E.N.H. also sustained a wound to her face.

LCpl E.N.H. eventually stopped fighting. The appellant, thinking she was either dead or quickly dying, turned on the hot water and left her in the shower. He then remained in the barracks room for approximately ten to fifteen minutes, only leaving when he felt certain that LCpl E.N.H. was dead.

During those ten to fifteen minutes, LCpl E.N.H. applied pressure to her neck and waited for the appellant to leave. When she heard the door close, LCpl E.N.H. crawled out of her room and cried for help. She was found in the hallway in a pool of blood.

As a result of the attack, LCpl E.N.H. underwent multiple surgeries and, as of the date of trial, had not recovered full

[3] Prosecution Exhibit 1 at 5. The appellant's father was deceased.

use of her right hand. She continued to suffer from nerve pain in her neck that doctors had not been able to resolve. She has engaged in counseling to overcome the severe emotional trauma.

During the ensuing investigation, a forensic examination of the appellant's cell phone revealed a Google search for the phrase "how to be a serial killer."[4] The appellant conducted this search less than 16 hours before the attack on LCpl E.N.H. The examination also revealed searches for "rape videos" and "real rape videos."[5]

Prior to trial, pursuant to RULE FOR COURTS-MARTIAL 706, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.), the appellant was evaluated by a behavioral health professional. The examining physician rendered the following opinions as to appellant's mental health:

> It is my opinion, with reasonable certainty, that at the time of the alleged criminal conduct, the accused did suffer from a severe mental disease or defect. . . . The clinical psychiatric diagnosis is Major Depressive Disorder. . . . At the time of the alleged criminal conduct and as a result of such mental disease of defect, the accused was not unable to appreciate the nature and quality and wrongfulness of his conduct. (He was able to appreciate the nature and quality and wrongfulness of his conduct.)[6]

The examining physician was able to review the appellant's medical history, including the complete list of medications that the appellant was taking in January 2014.

Sentence Severity

This court reviews sentence appropriateness *de novo*. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). 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). As part of that review, we give "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the

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[4] PE 7 at 2.

[5] *Id*. at 2-3.

[6] Appellate Exhibit IV at 3-4.

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)).

The appellant claims that his mental illness, in conjunction with both his prescribed and illicit drug use at the time of the charged offenses, makes his sentence inappropriately severe. We disagree.

During the providence inquiry, the military judge examined in great detail what, if any, potential defenses were available to the appellant. In a colloquy extending over eighteen pages,[7] the military judge established the following:

(a) that the CA had approved both a psychopharmacologist and a clinical psychologist to assist the appellant as expert consultants;[8]

(b) that both of these experts did, in fact, aid in the assessment of any potential defenses;[9]

(c) that the hearing under R.C.M. 706 determined the appellant suffered from a major depressive disorder, but was "able to appreciate the nature and quality and wrongfulness of [his] conduct;"[10]

(d) that the appellant had "vivid memory of choosing the acts that [he] did," "could have backed out of it," and understood that what he was doing was wrong;[11]

(e) that the appellant's use of "spice" had a calming effect and did not cause him to lose touch with reality;[12]

(f) that the defense's psychopharmacologist expert concluded that the appellant's concurrent use of spice and

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[7] Record at 116-34.

[8] *Id.* at 117.

[9] *Id.*

[10] *Id.* at 118-19; AE IV at 3.

[11] Record at 121-22.

[12] *Id.* at 124-25.

antidepressants did not constitute a defense, and that several other psychopharmacologists concurred in this conclusion;[13]

(g) that several months earlier the appellant had an adverse reaction to "spice" which resulted in his jumping out of a window; he was not, however, "experiencing that type of event" on the night he attacked LCpl E.N.H.;[14] and,

(h) that the appellant was not experiencing any of the effects of the "spice" at the time he tied up LCpl E.N.H.[15]

With this extensive examination, we are convinced the appellant's mental disorder and drug use did not rise to a defense to the charged offenses. The question, then, is: what role do these facts play in our review under Article 66(c), UCMJ? The Government urges this court to consider the evidence of the appellant's mental disorder and drug use as matters relevant only in clemency. We disagree, as we find they are relevant to an assessment of his rehabilitative potential, something we consider in determining what part or amount of the sentence should be approved.

To this end, we also find relevant the appellant's military history and family situation, and the testimony from his family and friends that he was a loving son, husband, and father, and an otherwise nonviolent person. Weighing against this, however, are the undeniably brutal and callous crimes to which the appellant pleaded guilty. Given the horrendous nature of the appellant's actions, the cold-blooded, calculated manner in which he did them, and the severe physical and emotional scarring he inflicted on a junior Marine, we find the sentence, as approved, appropriate. We are convinced, based on the entire record, justice was served and the appellant received the punishment he deserved.

Period of Suspension

Suspension of the execution of a sentence "shall be for a stated period or until the occurrence of an anticipated future event. . . . [and] shall not be unreasonably long." R.C.M. 1108(d). Although not raised as an error, we note that consistent with the terms of the written pretrial agreement, the

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[13] *Id.* at 126.

[14] *Id.* at 131.

[15] *Id.* at 132.

CA suspended all confinement in excess of 48 years "for the period of confinement adjudged plus thirty-six (36) months thereafter."[16] This is not consistent, however, with the stated understandings of the parties at trial. When discussing with the appellant the terms of the pretrial agreement, the military judge interpreted "period of confinement adjudged" to be 48 years.[17] The appellant stated that this interpretation comported with his understanding of the agreement[18] and both the appellant's counsel and the trial counsel concurred with the military judge's interpretation.[19] As the adjudged sentence included confinement for life with the possibility of parole, the period of suspension could run beyond his death, which in our view would make that provision contrary to public policy.[20] Since we find that the period of suspension agreed to by the parties at trial is neither unreasonable in length under the facts of this case, nor violative of public policy as a matter of law, we will address this issue in our decretal paragraph by substituting "48 years, plus an additional 36 months thereafter."[21]

Conclusion

The findings and the sentence as approved by the CA are affirmed. The supplemental court-martial order shall state that all confinement in excess of 48 years shall be suspended for 51 years from the date of the original action.

For the Court

R.H. TROIDL
Clerk of Court

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[16] Convening Authority's Action of 6 Jan 2015 at 3.

[17] Record at 235.

[18] *Id.*

[19] *Id.* at 237.

[20] We are mindful, however, that once the appellant's discharge is executed and he is released from an armed forces confinement facility, "he will lose his status as a person subject to the UCMJ and any suspended punishments will be remitted." *United States v. Gurganious*, 36 M.J. 1041, 1042 (N.M.C.M.R. 1993).

[21] Record at 235.