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

Before
F.D. MITCHELL, J.A. MAKSYM, R.E. BEAL
Appellate Military Judges

UNITED STATES OF AMERICA

v.

DARRYL L. BENNETT
SERGEANT (E-5), U.S. MARINE CORPS

NMCCA 200900305
GENERAL COURT-MARTIAL

Sentence Adjudged: 19 February 2009.
Military Judge: LtCol Robert Ward, USMC.
Convening Authority: Commander, 2d Marine Logistics Group, U.S. Marine Corps Forces Command, Camp Lejeune, NC.
Staff Judge Advocate's Recommendation: LtCol J.M. Henry, USMC.
For Appellant: CAPT Diane Karr, JAGC, USN.
For Appellee: Mr. Brian Keller, Esq.

8 October 2009

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

A military judge sitting as a general court martial convicted the appellant, pursuant to his pleas, of one specification of violating a lawful general order by providing an alcoholic beverage to a person under the age of 21, one specification of engaging in sexual intercourse with a minor female, and one specification each of sodomy, indecent acts and taking indecent liberties with a child in violation of Articles 92, 120, 125, and 134, Uniform Code of Military Justice, 10

U.S.C. §§ 920, 925 and 934. The appellant was sentenced to a dishonorable discharge, confinement for 16 years, forfeiture of all pay and allowances, and reduction to pay grade E-1. Pursuant to the pretrial agreement, the convening authority disapproved forfeitures of pay and allowances in excess of $400.00 per month and suspended all confinement in excess of 15 years. The convening authority approved the remainder of the sentenced as adjudged and, except for the dishonorable discharge, ordered it executed.

The appellant's sole assignment of error avers that his sentence is inappropriately severe and requests that this court affirm only that much of the sentence as provides for confinement six for years. We decline to grant relief.

"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 "'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)).

The appellant was convicted of a variety of sex offenses involving his minor niece (PJ) who lived with the appellant and his wife between 2004 and 2008. The appellant admitted to: placing his mouth on PJ's vagina; placing his penis in her mouth; fondling PJ's vagina while they playfully wrestled together; masturbating in front of her thereby exposing his penis to her; and finally, having sexual intercourse with her as she lay asleep on the floor in his house which resulted in PJ later becoming pregnant. All of these offenses occurred when PJ was over the age of 12 but had not yet reached the age of 16. After reviewing the entire record, we find that the sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *Snelling,* 14 M.J. at 268.

We therefore conclude that the findings and sentence are correct in law and fact and that no error was committed that was materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ. Accordingly, we affirm the findings and the sentence.

For the Court

R.H. TROIDL
Clerk of Court