

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

**Before  
D.E. O'TOOLE, V.S. COUCH, B.G. FILBERT  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**CHRISTOPHER R. RAMIREZ  
PERSONNEL SPECIALIST SEAMAN APPRENTICE  
(E-2), U.S. NAVAL RESERVE**

**NMCCA 200800821  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 18 June 2008.

**Military Judge:** LtCol William M. Brown, USMC.

**Convening Authority:** Commander, Navy Region, Mid-Atlantic,  
Norfolk, VA.

**Staff Judge Advocate's Recommendation:** CDR M.B. Shaw, JAGC,  
USN.

**For Appellant:** CAPT Johnathan Bryan, JAGC, USN; Maj C.J.  
Broadston, USMC.

**For Appellee:** LT Duke Kim, JAGC, USN.

**31 July 2009**

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**OPINION OF THE COURT**  
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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

FILBERT, Judge:

The appellant was tried by a general court-martial composed of a military judge. Pursuant to his pleas, he was convicted of seven specifications of conspiracy, one specification of making a false official statement, and three specifications of larceny in violation of Articles 81, 107, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 907, and 921. The appellant was sentenced to twenty-four months confinement, reduction to pay grade E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.

The appellant claims his sentence to twenty-four months confinement was disparately severe compared to the cases of his co-conspirators and "parallel conspirators." Appellant's Brief of 23 Feb 2009 at 6.

We have carefully examined the record of trial, the appellant's brief, and the Government's answer. We find the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred. See Arts. 59(a) and 66(c), UCMJ.

### **Disparate Sentences**

The appellant contends his sentence to twenty-four months of confinement is disparately severe because his co-conspirators and others involved in an unrelated but similar conspiracy received lesser punishments or different dispositions than him. We do not find merit in the appellant's contention.

#### **A. Facts**

The appellant was a transfer clerk at Personnel Support Activity (PSA) Atlantic Detachment, Groton, Connecticut. In October 2007, he began altering "guarantee sheets" to increase or improperly expedite payment of enlistment bonuses for several different Sailors. Record at 35; Prosecution Exhibit 1. The appellant's alteration of guarantee paperwork resulted in Fire Control Technician Seaman Apprentice (FTSA) Oravsky receiving an \$8000.00 bonus to which he was not entitled. The appellant also altered guarantee documents so that Seaman Apprentice (SA) Eliason, SA Brown, SA Christy, and Seaman (SN) Sparks were each paid bonuses of \$8000.00, instead of the \$6000.00 bonus they were actually entitled to receive. The appellant was paid \$750.00 by SA Eliason and \$500.00 each by SA Christy and SN Sparks for his fraudulent conduct. The appellant and Personnel Specialist Seaman (PSSN) Nivens also submitted guarantee sheets to enable premature payment of bonuses to SA McRee and SA Thacker before they met the prerequisite of graduating from "A" school. The appellant and PSSN Nivens were paid \$200.00 each by SA McRee and SA Thacker for their fraudulent submission of guarantee sheets.

In December 2007, PSSN Anderson and PSSN Gallagher conspired to submit fraudulent documents enabling Yeoman Seaman (YNSN) Jacobson to receive an enlistment bonus to which he was not entitled. Both PSSN Anderson and PSSN Gallagher were assigned to PSA Groton at the time of this conspiracy. The appellant was not involved in this scheme, although he did generally discuss with PSSA Gallagher how to submit fraudulent bonus paperwork.

In January 2008, the appellant lied to Naval Criminal Investigative (NCIS) Special Agent Tirocchi regarding his involvement in these conspiracies. The appellant confessed his involvement in these crimes in a subsequent interview with NCIS agents.

The following table summarizes the disposition of the cases involving the above individuals.<sup>1</sup>

#### Court-Martial Cases

Name	Forum <sup>2</sup>	Convicted Offenses	Approved Sentence <sup>3</sup>
Appellant	GCM	- Conspiracy x 7 - False Official Statement - Larceny x 3	BCD, 24 months CHL, total forfeiture of pay and allowances, RIR E-1
FTSA Oravsky	SPCM	- Conspiracy - Larceny	BCD (suspended by CA), 11 months CHL, \$8000.00 fine, RIR E-1
PSSN Gallagher	SPCM	- Conspiracy - Larceny	90 days CHL and RIR E-1 (both suspended by CA)
PSSN Anderson	SPCM	- Conspiracy - Larceny	90 days CHL and RIR E-1 (both suspended by CA)

#### Other Dispositions

Name	Disposition <sup>4</sup>
SA Eliason	NJP
SA Brown	No action discovered
SA McRee	NJP
SA Thacker	NJP
SA Christy	NJP and Other Than Honorable Administrative Separation
SN Sparks	No documented action
PSSN Nivens	No documented action
YNSN Jacobson	No documented action

#### B. Law

An appellant alleging sentence disparity bears the burden of demonstrating that any cited cases are "closely related" and that the sentences are "highly disparate." *United States v. Lacy*, 50

<sup>1</sup> The appellant alleges that the cases of Sonar Technician Seaman (STSSN) Flowers and Machinist's Mate Fireman (MMFN) Harpley are closely related to his case. We disagree. The appellant agreed to testify in the case against STSSN Flowers, as well as all of the other Sailors identified in the these two tables. However, the appellant provides no evidence, and the record contains no information, demonstrating a connection between his case and STSSN Flowers or MMFN Harpely. The appellant also provides no information concerning the alleged misconduct of these two Sailors. We therefore find their cases to be irrelevant to the appellant's sentence.

<sup>2</sup> General Court-Martial (GCM); Special Court-Martial (SPCM)

<sup>3</sup> Bad-Conduct Discharge (BCD); Confinement at Hard Labor (CHL); Reduction in Rate or Pay Grade (RIR); Convening Authority (CA).

<sup>4</sup> Nonjudicial Punishment (NJP).

M.J. 286, 288 (C.A.A.F. 1999). If an appellant meets this burden, then the Government must show a rational basis for the disparity. *Id.* Examples of closely related cases include "co-actors involved in a common crime, servicemembers involved in a common or parallel scheme, or some other direct nexus between the servicemembers whose sentences are sought to be compared." *Id.* Sentence comparison does not require sentence equation. *United States v. Durant*, 55 M.J. 258, 260 (C.A.A.F. 2001). The test in sentence disparity cases is "not limited to the narrow comparison of relative numerical values of the sentences at issue, but may also include consideration of the disparity in relation to potential maximum punishment." *Lacy*, 50 M.J. at 289.

The issue of sentence uniformity is not present when there is no court-martial record of findings and sentence that can be compared to the appellant's case. *United States v. Noble*, 50 M.J. 293, 294-95 (C.A.A.F. 1999). An appellant may bring to the attention to the Courts of Criminal Appeals differences in the initial disposition of cases. However, this "type of information, when it does not raise the legal issue of discriminatory or otherwise illegal prosecution or referral, is subject to such consideration as the experienced and mature judges of those courts [Courts of Criminal Appeals] deem appropriate." *Id.* If cases are closely related, yet result in widely disparate dispositions, we must decide whether the disparity results from good and cogent reasons. *United States v. Kelly*, 40 M.J. 558, 570 (N.M.C.M.R. 1994). If we find that good and cogent reasons do not exist for the widely disparate dispositions, we have the discretion to exercise our authority under Article 66, UCMJ, to reduce the disparity. *United States v. Snelling*, 14 M.J. 267, 269 (C.M.A. 1982); *Kelly*, 40 M.J. at 570.

### **C. Analysis**

At the outset, we note the sentence disparity analysis established in *Lacy* applies only to court-martial cases. See *Noble*, 50 M.J. at 295. Thus, we will only compare the appellant's case to the courts-martial of FTSA Oravsky, PSSN Gallagher and PSSN Anderson to determine whether appellant received a disparate sentence. We will assess the dispositions of the remaining eight cases under our authority under Article 66, UCMJ, to decide whether to reduce the appellant's sentence. *Kelly*, 40 M.J. at 570.

#### **1. Court-Martial Cases**

Applying the first step in the *Lacy* analysis, we find the cases of the appellant and FTSA Oravsky are closely related. The appellant and FTSA Oravsky were co-conspirators in a scheme that paid FTSA Oravsky an \$8000.00 bonus to which he was not entitled. They were the only two conspirators involved in this crime and both were convicted of the conspiracy and theft at court-martial. Record at 28-36.

Turning to the second part of the *Lacy* analysis, we do not find the approved sentences in these two cases to be highly disparate. The appellant pled guilty to multiple conspiracies and thefts that did not involve FTSA Oravsky. He also made a false official statement to an NCIS agent investigating his criminal conduct. In contrast, FTSA Oravsky was convicted of single specifications of conspiracy and larceny stemming from his scheme with the appellant. Moreover, the appellant faced a maximum sentence of seventy-six and a half years of confinement, but was only sentenced to twenty-four months confinement. This sentence to confinement is "relatively short compared to the maximum confinement." See *Lacy*, 50 M.J. at 289. Thus, the significant differences in criminal conduct between the appellant and FTSA Oravsky and the appellant's relatively short confinement sentence, lead us to conclude the appellant's sentence was not highly disparate to that of FTSA Oravsky.

With respect to the cases of PSSN Anderson and PSSN Gallagher, we do not find these cases to be closely related to the appellant's. Neither of these two individuals was involved in appellant's misconduct and vice versa. The appellant's crimes extended over several months and involved several different conspirators. The offenses of PSSN Anderson and PSSN Gallagher arose from a single scheme between them and YNSN Jacobson, an individual with no connection to the appellant or his crimes.<sup>5</sup>

## 2. Other Dispositions

We find the nonjudicial dispositions of cases involving Sailors who conspired with the appellant to submit fraudulent claims for enlistment bonuses (SA Eliason, SA Brown, SA McRee, SA Thacker, SA Christy, SN Sparks and PSSN Nivens) to be closely related to the appellant's. Each of these individuals was directly involved in at least one of the crimes for which the appellant was sentenced. See *Kelly*, 40 M.J. at 570.

We find, however, good and cogent reasons for the different dispositions of these cases. The appellant committed numerous conspiracies stretching over a three-month period. He was convicted of stealing and wrongfully appropriating \$32,000 belonging to the United States Government. In contrast, each of these individuals was involved in a small subset of the crimes for which the appellant was sentenced. Additionally, we do not find any evidence that the different dispositions resulted from a "factor that seriously detracts from the appearance of fairness and integrity in the military justice proceedings." *Id.* We, therefore, see no reason to question the decisions by the convening authorities on how to dispose of these cases.

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<sup>5</sup> Because of the absence of any connection between the appellant and YNSN Jacobson, we do not find the appellant's case to be closely related to the disposition of any case involving YNSN Jacobson.

Finally, we are satisfied that the appellant's sentence is appropriate to this offender and his offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F 2005).

**Conclusion**

Accordingly, we affirm the findings and sentence as approved by the convening authority.

Chief Judge O'TOOLE and Senior Judge COUCH concur.

For the Court

R.H. TROIDL  
Clerk of Court