

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

**Before  
J.R. PERLAK, M.D. MODZELEWSKI, C.K. JOYCE  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**LUCIEN B. BERREY III  
YEOMAN THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 201200275  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 20 March 2012.

**Military Judge:** LtCol Michael Mori, USMC.

**Convening Authority:** Commander, Navy Region Hawaii, Pearl Harbor, HI.

**Staff Judge Advocate's Recommendation:** LCDR K.A. Elkins, JAGC, USN.

**For Appellant:** CAPT Ross L. Leuning, JAGC, USN.

**For Appellee:** CDR Monte G. Miller, JAGC, USN; Maj David N. Roberts, USMC.

**31 October 2012**

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**OPINION OF THE COURT**  
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**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 pleas, of two specifications of attempted receipt of child pornography and one specification of possession of child pornography, in violation of Articles 80 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880 and 934. The appellant was sentenced to

confinement for fifteen months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged, and suspended all confinement in excess of twelve months pursuant to a pretrial agreement.<sup>1</sup>

The appellant raises one assignment of error, averring that a bad-conduct discharge is unjustifiably severe. We disagree and 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 the 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 began searching for and viewing child pornography in February of 2009 and continued through August of 2010. On dozens of occasions, the appellant entered search terms for particular types of child pornography, knowing that those terms would lead him to videos of children engaged in sexually explicit conduct. He then downloaded and viewed those videos and images. Although occasionally the files would not open properly due to software problems, the appellant intended to receive and in fact did receive child pornography on many occasions during a two-year-period. Additionally, he possessed twelve videos that showed young girls, at least one of whom was under the age of ten, being sexually assaulted by an adult male. The offenses to which the appellant pled guilty carried a maximum sentence of thirty years confinement and a dishonorable discharge.

After *de novo* review of 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. Granting sentence relief at this point would be to engage in clemency, a prerogative reserved for the CA, and we decline to do so. *Healy*, 26 M.J. at 395-96.

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<sup>1</sup> To the extent that the convening authority's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543 (N.M.Ct.Crim.App. 2011).

We conclude that the findings and the 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. We affirm the findings and the sentence as approved by the CA.

For the Court

R.H. TROIDL  
Clerk of Court