

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

**Before  
J.R. PERLAK, M.D. MODZELEWSKI, R.Q. WARD  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**JOHN P. GABBARD  
AVIATION ELECTRONICS TECHNICIAN FIRST CLASS (E-6)  
U.S. NAVY**

**NMCCA 201200134  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 2 December 2011.

**Military Judge:** CDR Lewis T. Booker, Jr., JAGC, USN.

**Convening Authority:** Commander, Navy Region Northwest,  
Silverdale, WA.

**Staff Judge Advocate's Recommendation:** LCDR D.E. Rieke,  
JAGC, USN.

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

**For Appellee:** CAPT James B. Melton, JAGC, USN; Maj David N.  
Roberts, USMC.

**24 July 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 a specification of taking indecent liberties with a child under sixteen, two specifications of sexual contact with a child under twelve, a specification of sodomy with a child under twelve, and

a specification of possession of child pornography, in violation of Articles 120, 125, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920, 925, and 934. The appellant was sentenced to confinement for thirty years, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged and, except for the dishonorable discharge, ordered it executed. Pursuant to a pretrial agreement, however, he suspended all confinement in excess of ten years for the period of confinement served plus twelve months.

The appellant avers that ten years of confinement is inappropriately severe. Following *de novo* review, 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 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)). We independently determine the appropriateness of the sentence in each case we affirm. See *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005).

The appellant's misconduct as developed in this record is self-explanatory and no recitation relative to the facts of the case or the appellant would serve any constructive purpose in articulating how we arrived at our conclusion that the assigned error does not merit relief from this court. We readily find that the sentence is appropriate for this offender and his offenses. Granting sentence relief at this point would be engaging in an act of clemency, a prerogative reserved to the convening authority, and we decline to do so. *Healy*, 26 M.J. at 395-96.

We hold that the assigned error is without merit and conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ.

We affirm the findings and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL  
Clerk of Court