

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

**Before
B.L. PAYTON-O'BRIEN, R.Q. WARD, J.R. MCFARLANE
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**NICHOLAS M. LEPINSKI
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201200337
GENERAL COURT-MARTIAL**

Sentence Adjudged: 22 June 2012.

Military Judge: Col Deborah McConnell, USMC.

Convening Authority: Commanding General, 2d Marine Logistics Group, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: LtCol R.G. Bracknell, USMC.

For Appellant: CAPT Diane Karr, JAGC, USN.

For Appellee: LCDR Clay Trivett, JAGC, USN; Maj David N. Roberts, USMC.

30 November 2012

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 a general court-martial convicted the appellant, pursuant to his pleas, of two specifications each of conspiracy, wrongful use of a controlled substance, theft of military property, and housebreaking in violation of Articles 81, 112a, 121, and 130, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 912a, 921, and 930. The military judge sentenced the appellant to four years and six

months confinement, total forfeitures, a \$10,000.00 fine, and a dishonorable discharge. The convening authority approved the sentence as adjudged but, pursuant to a pretrial agreement, suspended all confinement in excess of 24 months and suspended the fine for a period of 12 months following his action.

In his sole assigned error, the appellant characterizes his adjudged punitive discharge as "unjustifiably severe" and urges us to affirm only a bad-conduct discharge. We decline to do so.

This court reviews the appropriateness of the sentence *de novo*. *United States v. Roach*, 66 M.J. 410 (C.A.A.F. 2008). We engage in a review that gives "'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, 180-181 (C.M.A. 1959)). Here, the appellant and his co-conspirators on two different occasions broke into a unit warehouse and a separate storage area and stole a total of 44 laptop computers belonging to the command. Only five of the 44 laptops were recovered. The total replacement value of these laptops is \$120,000.00. Apart from these thefts, the appellant also used both cocaine and marijuana on separate occasions.

While we value the appellant's service in Afghanistan, his service cannot overcome such a significant theft of military property. We find a dishonorable discharge and the entire sentence adjudged appropriate under the circumstances of this case. To grant relief at this point would be engaging in clemency, a prerogative reserved for the convening authority, and we decline to do so. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

We 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 was committed. Arts. 59(a) and 66(c), UCMJ. The findings and the sentence as approved by the convening authority are affirmed.

For the Court

R.H. TROIDL
Clerk of Court