

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

**Before  
M.D. MODZELEWSKI, E.C. PRICE, C.K. JOYCE  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**DANIEL A. REICH  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201200222  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 8 March 2012.

**Military Judge:** LtCol Nicole K. Hudspeth, USMC.

**Convening Authority:** Commanding General, U.S. Marine Corps  
Forces, Special Operations Command, Camp Lejeune, NC.

**Staff Judge Advocate's Recommendation:** LtCol C.B. Walters,  
USMC.

**For Appellant:** Maj Emmett Collazo, USMCR.

**For Appellee:** CDR John J. Flynn, JAGC, USN; Maj David N.  
Roberts, USMC.

**17 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 one specification of attempting to sell military property of a value of more than \$500.00, one specification of conspiracy, three specifications of selling military property of a value of more than \$500.00, and one specification of wrongfully receiving

stolen property of a value of more than \$500.00, in violation of Articles 80, 81, 108, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 881, 908, and 934. The military judge sentenced the appellant to confinement for 40 months, a fine of \$2,500.00, reduction to pay grade E-1, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged but, in accordance with the pretrial agreement, suspended all confinement in excess of 12 months and suspended the fine for a period of six months from the date of the CA's action.<sup>1</sup>

The appellant raises one assignment of error, averring a dishonorable discharge is inappropriately severe given the nature and seriousness of the offenses and the character of the appellant, including the character of his service.<sup>2</sup>

After carefully considering the record of trial and the submissions of the parties, we are convinced that the findings and sentence are correct in law and fact, and that no error materially prejudicial to the substantial rights of the appellant occurred. Art. 59, UCMJ.

#### **Sentence Appropriateness**

In accordance with Article 66(c), UCMJ, a military Court of Criminal Appeals "may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." 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 assigned as the Battalion Ammunition Chief to 3d Marine Special Operations Battalion (3dMSOB), Marine Special Operations Command (MARSOC), Camp Lejeune, North Carolina. From 1 October 2010 to 31 August 2011, the appellant

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<sup>1</sup> To the extent that the convening authority's action purported to execute the bad-conduct discharge, it was a nullity. *United States v. Bailey*, 68 M.J. 409 (C.A.A.F. 2009).

<sup>2</sup> Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

had an ongoing agreement with his officer-in-charge (OIC), Captain James Warner, U.S. Marine Corps, the Battalion Logistics (S-4) Officer, to sell military property. While the S-4 Officer for 3d MSOB, Captain Warner obtained military property and gave it to the appellant to sell. The appellant knew that it was stolen property. Record at 40. He knew it belonged to the U.S. Marine Corps, and he knew that he did not have any authority to sell such property. When asked by the military judge if he felt he had to enter in this conspiracy because Captain Warner was "a senior ranking officer," the appellant responded, "No, ma'am." *Id.* at 32.

As part of the conspiracy between the appellant and his OIC, the appellant would travel to such places as Virginia Beach, Virginia; Augusta, Georgia; Sneads Ferry, North Carolina; and Raleigh, North Carolina, selling well over a total of one hundred items of stolen military property; to include controlled items such as small arms protective insert plates, soft ballistic armor, night vision goggles, and infrared beacon systems. Had it not been for local law enforcement intervention, the appellant would have completed an additional sale of military property. Prosecution Exhibit 1 at 3. The appellant received \$10,000.00 for the three completed sales<sup>3</sup> and would have received \$6,500.00 for this last sale if it had been completed. Evidence at sentencing revealed that this was the appellant's sixth sale. PE 3 at 6. He gave his OIC "at least \$4,000 for his role in providing [him] with the military property;" but admitted that he "received these items for the purpose of selling [them] for personal benefit" to buy an engagement ring and components to build rifles. PE 1 at 3, 8; Record at 69.

The appellant states that a dishonorable discharge is an inappropriate punishment because he served 6 1/2 years prior to his court-martial; earning competitive performance evaluation reports and personal awards. Moreover, upon apprehension, he cooperated with investigative authorities, agreed to testify against his OIC and others involved in similar misconduct,<sup>4</sup> and pled guilty to the charges before a military judge alone,

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<sup>3</sup> Each of the three completed sales was made to a confidential source working with the Naval Criminal Investigative Service, unbeknownst to the appellant.

<sup>4</sup> The trial counsel provided a letter on the appellant's behalf submitted as part of his clemency matters stating that he has "complied with his obligation to cooperate with the prosecution of his co-conspirators and other individuals at MARSOC involved in illegal activities." See Clemency Letter of 7 May 11 at Encl (1).

pursuant to a pretrial agreement that protected him against confinement in excess of 12 months and fines.

At sentencing, the Government argued for 30 months and a dishonorable discharge, while the appellant, through counsel, pleaded that the military judge not award a dishonorable discharge.<sup>5</sup> The military judge awarded confinement of 40 months, a fine of \$2,500.00, reduction to pay grade E-1, and a dishonorable discharge. The appellant requested as clemency that the CA commute the dishonorable discharge to a bad-conduct discharge. The CA elected not to do so.

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. In addition to considering the nature and seriousness of the specific offenses committed by the appellant, we have carefully considered the character of the offender. This includes the appellant's performance and awards during the course of his Marine Corps career. Considering the entire record, we conclude that 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.

### **Conclusion**

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

For the Court

R.H. TROIDL  
Clerk of Court

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<sup>5</sup> The maximum punishment for the offenses pled to by the appellant was 44 years confinement, total forfeitures, a fine, reduction to pay grade E-1, and a dishonorable discharge.