# 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.**

**DAVID L. RESHENBERG**
**SEAMAN (E-3), U.S. NAVY**

**NMCCA 201200450**
**SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 11 July 2012.
**Military Judge:** CAPT Kevin O'Neil, JAGC, USN.
**Convening Authority:** Commanding Officer, USS BOXER (LHD 4).
**For Appellant:** CDR Edward Hartman, JAGC, USN.
**For Appellee:** LT Lindsay P. Geiselman, JAGC, USN.

**12 February 2013**

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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 special court-martial convicted the appellant, pursuant to his pleas, of two specifications of general orders violations (possession of Spice and drug abuse paraphernalia), and one specification of wrongful use of marijuana, in violation of Articles 92 and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 912a. The military judge sentenced the appellant to reduction to pay grade E-1, forfeiture of $950.00 pay per month for one month, and a bad-conduct discharge. The pretrial agreement in this case did not affect the adjudged sentence, which the convening authority approved.

The appellant avers that the punitive discharge awarded and approved was unjustifiably severe.[1] We disagree.

It is well-settled that a court-martial is free to impose any lawful sentence that it determines appropriate. *United States v. Turner*, 34 C.M.R. 215, 217 (C.M.A. 1964). We review the appropriateness of the sentence *de novo*. *United States v. Roach*, 66 M.J. 410, 413 (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, 180-81 (C.M.A. 1959)).

We find the sentence adjudged, including the bad-conduct discharge, 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 are convinced that justice was done and that the appellant received the punishment he deserved. *Id.* at 395.

**Conclusion**

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

[1] Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).