

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS  
WASHINGTON NAVY YARD  
WASHINGTON, D.C.**

**BEFORE**

**D.A. WAGNER**

**R.E. VINCENT**

**E.B. STONE**

**UNITED STATES**

**v.**

**Leodigaerlan G. PANOPIO  
Chief Hospital Corpsman (E-7), U. S. Navy**

NMCCA 200401487

Decided 15 March 2006

Sentence adjudged 15 May 2004. Military Judge: D.J. Daugherty. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, 3d Medical Battalion, 3d Force Service Support Group, U.S. Marine Corps Forces, Okinawa, Japan.

Maj J. ED CHRISTIANSEN, USMC, Appellate Defense Counsel  
LCDR MONTY MILLER, JAGC, USNR, Appellate Government Counsel  
Maj KEVIN HARRIS, USMC, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

STONE, Judge:

A military judge, sitting as a special court-martial, convicted the appellant, following the entry of mixed pleas, of two specifications of making a false official statement and one specification of indecent exposure in violation of Articles 107 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 934. The appellant was sentenced to confinement for one month, restriction for two months, a reprimand, and a bad-conduct discharge. The convening authority approved the confinement and the bad-conduct discharge and ordered the confinement executed. He did not approve the reprimand and the restriction.

We have examined the record of trial, the appellant's two assignments of error, and the Government's response. 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.

## Evidence of Potential Loss of Retirement Benefits Due to Punitive Discharge

In his first assignment of error, the appellant accuses his civilian defense counsel of ineffective assistance when his counsel "failed to bring an expert witness who could testify as to Appellant's potential loss of retirement benefits." We disagree.

We apply the two-part test set forth in *Strickland v. Washington*, 466 U.S. 669, 687 (1984), to claims of ineffective assistance of counsel at trial by courts-martial.

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

*Id.*

The appellant's contention fails for three reasons. First, we are unaware of any requirement, in a trial before a military judge alone, or for that matter, even in a trial before members, that an *expert witness* be presented regarding the potential loss of retirement benefits due to the imposition of a punitive discharge. Second, in trials before members, our superior court has held that it is not necessary for a military judge to instruct the members of the potential loss of military retirement benefits where an appellant was three years from retirement and would have been required to reenlist in order to retire. *United States v. Henderson*, 29 M.J. 221, 223 (C.M.A. 1989). Here, the appellant was more than four years from possible retirement, and no evidence was presented as to whether the appellant would have been required to reenlist in order to reach retirement eligibility. *See also United States v. Boyd*, 55 M.J. 217, 221 (C.A.A.F. 2001)(holding that a military judge may deny a request for a sentencing instruction on the impact of a punitive discharge on retirement benefits where there is no evidentiary predicate for it, or the possibility of retirement is so remote as to make it irrelevant to determining an appropriate sentence.) Finally, third, we note that the civilian defense counsel appropriately argued during sentencing that the military judge should consider the appellant's sixteen years of exemplary service. On that basis, we are completely confident that the military judge, a lieutenant colonel in the United States Marine Corps, was fully aware that imposition of a punitive discharge would entirely deprive the appellant of any chance for receiving retirement benefits. Likewise, we are entirely confident that

the military judge fully appreciated the potential value of a possible military retirement to the appellant.

Accordingly, applying the first prong of *Strickland* to the facts at bar, we do not find the civilian defense counsel's performance to be deficient. This assignment of error is without merit.

### **Sentence Severity**

In his second assignment of error, the appellant alleges that a bad-conduct discharge is inappropriately severe given the character of the appellant and his 16 years of outstanding service. We disagree. The appellant persistently waived his exposed penis at a female military spouse and her young daughter in a public park aboard an overseas military installation and then lied about his behavior to investigators. This is severe misconduct. The sentence, as approved by the convening authority is appropriate for this offender and his offenses. *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

### **Conclusion**

The findings and sentence, as approved by the convening authority, are affirmed.

Senior Judge WAGNER and Judge VINCENT concur.

For the Court

R.H. TROIDL  
Clerk of Court