

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

**BEFORE**

**C.L. CARVER**

**D.A. WAGNER**

**R.W. REDCLIFF**

**UNITED STATES**

**v.**

**Magdalena M. JABLONSKA  
Corporal (E-4), U.S. Marine Corps**

NMCCA 200101210

Decided 13 January 2005

Sentence adjudged 2 November 2000. Military Judge: S.A. Folsom. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commanding General, 3d Marine Aircraft Wing, Camp Pendleton, CA.

CDR MICHAEL WENTWORTH, JAGC, USNR, Appellate Defense Counsel  
CDR GEORGE F. REILLY, JAGC, USN, Appellate Defense Division  
LCDR E.J. MCDONALD, JAGC, USN, Appellate Defense Counsel  
LT KATHLEEN HELMANN, JAGC, USNR, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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

REDCLIFF, Judge:

Following mixed pleas at a general court-martial composed of enlisted and officer members, the appellant was convicted of wrongfully importing Ketamine (two specifications), wrongfully introducing Ketamine onto military installations (three specifications), wrongfully manufacturing Ketamine (two specifications), and wrongfully distributing Ketamine (two specifications), in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. The appellant was sentenced to four years confinement, total forfeitures of pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the adjudged sentence but suspended confinement in excess of 36 months.

We have carefully examined the record of trial and the appellant's three assignments of error asserting ineffective assistance of counsel, sentence inappropriateness, and unreasonable and unexplained delay in post-trial review. We have also considered the Government's response. We conclude that the

findings and 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.

### **Ineffective Assistance of Counsel**

The appellant was born in Poland and was not a United States citizen at the time of her court-martial. She now asserts that she was inadequately represented by detailed defense counsel and civilian counsel because they failed to introduce evidence during the sentencing phase of her court-martial of how a court-martial conviction could adversely impact her immigration status. We decline to grant relief.

The test to determine whether an appellant received ineffective assistance of counsel was established in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under *Strickland*, the appellant must demonstrate that the trial defense counsel's performance was deficient and that the deficiency resulted in prejudice to the appellant. When reviewing the trial defense counsel's performance, tactical decisions will not be second-guessed unless they lack "a plausible basis". *United States v. Mansfield*, 24 M.J. 611, 617 (A.F.C.M.R 1987); *United States v. Garries*, 19 M.J. 845, 864 (A.F.C.M.R 1985)(citing *United States v. Rivas*, 3 M.J. 282 (C.M.A. 1977)). Nor will trial defense counsel's performance be judged by the success of the case, but rather by whether the counsel made reasonable choices in trial strategy from the alternatives available at trial. *United States v. Dewrell*, 55 M.J. 131, 136 (C.A.A.F. 2001) (quoting *United States v. Hughes*, 48 M.J. 700, 718 (A.F.Ct.Crim.App. 1998)).

Our superior court has long held that "[c]ollateral consequences of a court-martial conviction should not be the concern of the court-martial...." *United States v. Hall*, 46 M.J. 145, 146 (C.A.A.F. 1997)(citing *United States v. McElroy*, 40 M.J. 368, 371-72 (C.M.A. 1994) and *United States v. Griffin*, 25 M.J. 423 (C.M.A. 1988)). Additionally, the potential for deportation has long been recognized as a collateral consequence of a court-martial. *United States v. Bedenia*, 12 M.J. 373, 376 (C.M.A. 1982); *United States v. Berumen*, 24 M.J. 737, 740 (A.C.M.R.) 1987). Given the collateral and speculative nature of the appellant's potential deportation based on her conviction, we do not find deficient representation under the *Strickland* standard.

Even if the potential for deportation were not viewed as a purely collateral matter, we would afford the appellant no relief. Although trial defense counsel did not present direct evidence regarding the potential consequence of deportation, we find no prejudice to the appellant. At trial, the members were provided information regarding the appellant's citizenship status during the case on the merits and at sentencing. Additionally, trial defense counsel submitted a detailed clemency package that highlighted, among other mitigating factors, the appellant's citizenship status and potential deportation, prompting the

convening authority to suspend confinement in excess of 36 months as an act of clemency. Thus, we find no merit to this assignment of error.

### **Sentence Appropriateness**

The appellant also contends that her sentence to four years confinement was inappropriately severe given her prior exemplary record, her post-arrest cooperation with law enforcement authorities, and her acceptance of responsibility. We disagree.

"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 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)).

The appellant's crimes of importing, manufacturing, and distributing ketamine, as well as introducing ketamine onto two Marine Corps installations, are serious offenses that warrant severe punishment. The appellant committed multiple violations of each charged offense over a period of time. She sold and also gave away Ketamine, a controlled substance, to fellow Marines and others, including a Marine who used the Ketamine she provided while assigned duties on an aircraft crash rescue unit. After careful consideration of the entire record, including the appellant's character and service record, we find the sentence was appropriate.

### **Post-Trial Delay**

As to the assignment of error concerning post-trial delay, we are cognizant of this Court's power under Article 66(c), UCMJ, to grant sentence relief for excessive post-trial delay even in the absence of actual prejudice. *See United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002). Although the two-plus year post-trial delay in this case was excessive and unexplained, we have not found any prejudice or other harm to the appellant resulting from it, nor have we concluded that the delay affects the "findings and sentence [that] '*should be approved*,' based on all the facts and circumstances reflected in the record." *Id.* (emphasis added). In fact, the delay in processing the appellant's case may have proven beneficial to the extent that it forestalled her prospective deportation. Thus, we find no merit in this assignment of error and decline to grant the requested relief.

**Conclusion**

Accordingly, we affirm the findings and the sentence, as approved by the convening authority.

Senior Judge CARVER and Judge WAGNER concur.

For the Court

R.H. TROIDL  
Clerk of Court