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.

Aaron T. RUGGS
Storekeeper Third Class (E-4), U.S. Navy

NMCCA 200301267 Decided 25 February 2005

Sentence adjudged 24 January 2002. Military Judge: K.E. Grunawalt. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commander, Naval Training Center, Great Lakes, IL.

Capt ROLANDO SANCHEZ, USMC, Appellate Defense Counsel
LT GUILLERMO ROJAS, JAGC, USNR, Appellate Government Counsel

WAGNER, Judge:

The appellant entered pleas of not guilty to forcible sodomy with a child under 16 years of age and indecent assault on a child under 16 years of age in violation of Article 125 and 134, Uniform Code of Military Justice, 10 USC §§ 925 and 934. He entered a plea of guilty to a lesser-included-offense of sodomy with a child under 16 year of age in violation of Article 125, UCMJ. A military judge sitting as a general court-martial convicted the appellant, as charged, of forcible sodomy with a child under 16 years of age and indecent assault on a child under 16 years of age in violation of Articles 125 and 134, UCMJ. The military judge sentenced the appellant to a dishonorable discharge, confinement for 6 years, and reduction to pay grade E-1. There was no pretrial agreement. The convening authority approved the sentence as adjudged.

The appellant alleges that the evidence adduced at trial was factually and legally insufficient to prove the appellant guilty beyond a reasonable doubt of forcible sodomy and indecent assault; that the military judge abused his discretion when he refused to recuse himself after speaking with the victim's family

during the trial; that he was denied speedy post-trial review of his court-martial; and that the sentence of a dishonorable discharge was inappropriately severe for the crimes committed.

After carefully considering the record of trial, the appellant's assignments of error, the Government's response, and the appellant's reply, 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.

Facts

The appellant, a 26-year-old Navy petty officer, resided with his wife and son in the same neighborhood with the victim, J, a 14-year-old dependent residing with her parents. J routinely babysat for the appellant and his wife.

On 6 September 2001, a school day, J remained at home alone because she was not yet enrolled in school. The appellant, who was aware that she was home alone, came to her house on his way home for lunch and asked J about babysitting for him. Although the appellant's providence and J's testimony disagree as to when she was to babysit, there is no disagreement that he asked her to come to his residence at that time.

The appellant admitted during providence that he kissed J, fondled and sucked on her breasts, and had anal intercourse with her at his residence. He stated during providence that these acts were all consensual.

J testified that she went to the appellant's house and found him home alone. According to her testimony, the appellant made advances toward her, which she rebuffed. She testified that he tried to kiss her, pulled her down onto him on the couch, and fondled and sucked on her breasts. J testified that the appellant pushed her into a bedroom, forced her face-down on the bed, pulled her pants down, and forcibly placed his penis in her rectum.

J returned to her house, hid in a closet, and placed a hysterical telephone call to her mother at work, telling her what had occurred. The police and an ambulance were called and responded. J was crying and barely able to speak. J was transported to the hospital, treated, and released. J suffered a tear to her rectum, but had no other apparent physical injuries.

Sufficiency of Evidence

The appellant alleges that the evidence adduced at trial was both legally and factually insufficient to prove beyond a reasonable doubt that he committed forcible sodomy and indecent assault.

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the Government, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987); *United States v. Reed*, 51 M.J. 559, 561-62 (N.M.Crim.Ct.App. 1999), *aff'd*, 54 M.J. 37 (C.A.A.F. 2000); *see also* Art. 66(c), UCMJ.

The test for factual sufficiency is whether, after weighing all the evidence in the record of trial and recognizing that we did not see or hear the witnesses, as did the trial court, this court is convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325; *see also* Art. 66(c), UCMJ.

In this case, the sworn testimony of the victim is supported by the testimony of a neighbor who saw the appellant run from J's house after the incident, the testimony of J's mother, the testimony of the emergency medical technicians, the testimony of the treating sexual assault nurse, the testimony of the treating pediatrician, and, in substantial measure, by the admissions of the appellant. The defense sought to discredit J by exposing inconsistencies in some of the details between how she described the assault to a youth center employee and how she described the assault in her testimony at trial. The defense also sought to discredit J's testimony through cross-examination regarding entries she made in her diary regarding boys, love, and sex. The appellant did not testify on the merits.

Considering all the evidence presented in the light most favorable to the Government, it is clear that a rational trier of fact could have found the appellant guilty of each and every element of the charged offenses. Additionally, having reviewed all the testimony and evidence, and recognizing that we have not seen or heard the witnesses, we are convinced of the appellant's guilt beyond a reasonable doubt. The evidence of guilt is overwhelming.

Recusal of the Military Judge

The appellant avers that the military judge erred by failing to recuse himself on defense motion for speaking to J's parents during a recess in the trial. We disagree.

The military judge stated on the record that he was approached by J's parents during a recess in the sentencing portion of the court-martial. He stated that they asked him about the military justice system and the difference between military and civilian judges. He explained the military and civilian justice systems to J's parents. The military judge also stated on the record that there was no discussion of the case and that the brief conversation would have no impact on how he viewed the case or the testimony before him.

We review a military judge's decision on recusal for an abuse of discretion. *United State v. Wright,* 52 M.J. 136, 141 (C.A.A.F. 1999). A military judge should disqualify himself when a reasonable person might question his impartiality. RULE FOR COURTS-MARTIAL 902(a), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.). The decision to recuse should be assessed objectively from the standpoint of a reasonable person with knowledge of all the facts. *Wright,* 52 M.J. at 141. Here, the military judge made a full disclosure on the record of the conversation. He stated that it was not related to the case before him and would have no bearing on him. The defense counsel had the opportunity to voir dire the judge and the record before us demonstrates that the appellant was in no way prejudiced by the military judge's decision not to recuse himself. *United States v. Campos,* 42 M.J. 253, 262 (C.A.A.F. 1995).

While the better practice for trial judges is to avoid all discussions with potential witnesses or other interested parties during trial, we find no error under the circumstances of this case. We specifically find that a reasonable person with knowledge of all the facts and circumstances contained in the record of trial would not perceive any lack of impartiality on the part of the military judge.

Post-Trial Delay

The appellant contends that the delay from the date his court-martial concluded to the date that this case was docketed for review with this court was unreasonable and asks that we grant relief. We disagree and decline to grant relief.

As stated by our superior Court in *United States v. Tardiff,* 57 M.J. 219, 224 (C.A.A.F. 2002), this Court "has authority under Article 66(c) to grant relief for excessive post-trial delay without a showing of 'actual prejudice' within the meaning of Article 59(a), if it deems relief appropriate under the circumstances." We are further "required to determine what findings and sentence 'should be approved,' based on all the facts and circumstances reflected in the record, including the unexplained and unreasonable post-trial delay." *Id.*

The appellant was sentenced on 24 January 2002, and the resulting 341-page record of trial was authenticated eight months later, on 20 September 2002. The convening authority took action on 12 February 2003 after considering the staff judge advocate's recommendation (SJAR) dated 17 October 2002, the appellant's clemency petitions submitted on 21 and 25 November 2002, the SJAR Addendum dated 16 December 2002, trial defense counsel’s R.C.M. 1105 letter dated 3 January 2003, and the SJAR addenda dated 24 and 27 January 2003. The Navy-Marine Corps Appellate Review Activity received the original record of trial 7 months later, on 24 June 2003. The Court of Military Appeals found that size of the record and the complexity of the review were factors in determining whether delay was reasonable. *United States v.*

Timmons, 46 C.M.R. 226, 227 (C.M.A. 1973). The delay in this case of one year and five months from sentencing until receipt by this court cannot be held to be unreasonable given the length and complexity of the record of trial.

Even assuming the delay to be unreasonable, the appellant claims no specific prejudice resulting from the delay and presents nothing to show that he has been in any way harmed or negatively impacted by the length of post-trial review in this case. Based on all the facts and circumstances in the record before us, including the post-trial delay, we are convinced that the findings and sentence approved by the convening authority should be affirmed.

Severity of Sentence

The appellant contends that the dishonorable discharge awarded as part of the military judge's sentence is too severe under the circumstances of this case. He asks that we disapprove the dishonorable discharge or, in the alternative, remit it to a bad-conduct discharge. We disagree and decline to grant relief.

After reviewing the entire record, we find that the sentence, including a dishonorable discharge, 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). The appellant was found guilty of forcible sodomy of a child under the age of 16 years of age and indecent assault on a child under 16 years of age. Such serious criminal conduct is deserving of such a severe punishment.

Conclusion

Accordingly, the findings of guilty and the sentence, as approved by the convening authority, are affirmed.

Senior Judge CARVER and Judge REDCLIFF concur.

For the Court

R.H. TROIDL
Clerk of Court