

UNITED STATES COAST GUARD COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Frank G. HENDERSON
Lieutenant (O-3), U.S. Coast Guard

CGCMG 0329
Docket No. 1426

5 January 2017

General Court-Martial convened by Coast Guard Director of Operational Logistics. Tried at Norfolk, Virginia, on 14-15 January and 11 February 2015.

Military Judge:	CAPT Gary E. Felicetti, USCG
Trial Counsel:	LT Amy K. Sung, USCGR
Assistant Trial Counsel:	CDR Michael R. Sinclair, USCG
Defense Counsel:	LT Jason W. Roberts, USCGR
Assistant Defense Counsel:	CAPT Paul C. LeBlanc, JAGC, USN
Appellate Defense Counsel:	LT Philip A. Jones, USCGR
Appellate Government Counsel:	LT Tereza Z. Ohley, USCGR

BEFORE
McCLELLAND, SPOLIDORO & JUDGE
Appellate Military Judges

Per curiam:

Appellant was tried by general court-martial, military judge alone. Pursuant to his pleas, entered in accordance with a pretrial agreement, Appellant was convicted of one specification of failure to obey a lawful general order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one specification of false official statements, in violation of Article 107, UCMJ; one specification of assault and battery, in violation of Article 128, UCMJ; one specification of adultery, in violation of Article 134, UCMJ; and one specification of willfully disobeying superior commissioned officer, in violation of Article 90, UCMJ. The military judge sentenced Appellant to confinement for six hundred days. The Convening Authority approved the

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sentence, but suspended confinement in excess of 240 days, in accordance with the pretrial agreement.

Before this Court, Appellant has assigned as error that the military offense of adultery violates Appellant's right to Equal Protection by singling out heterosexual servicemembers for heightened criminal liability.

We reject the issue, following the well-reasoned lead of the Navy-Marine Corps Court of Criminal Appeals in *United States v. Hackler*, 75 M.J. 648 (N.M.Ct.Crim.App. 2016). The fact that the Manual for Courts-Martial, United States (2012 ed.) (MCM), sets forth elements of adultery in heterosexual terms under Article 134 does not preclude a specification under Article 134 alleging a similar offense involving a married homosexual, which would most likely be subject to the same maximum sentence as that established for adultery in MCM, Pt. IV, para. 62e. *See* Rule for Courts-Martial 1003(c)(1)(B)(i), MCM.

Decision

We have reviewed the record in accordance with Article 66, UCMJ. Upon such review, the findings and sentence are determined to be correct in law and fact and, on the basis of the entire record, should be approved. Accordingly, the findings of guilty and the sentence, as approved below, are affirmed



For the Court,

Sarah P. Valdes
Clerk of the Court