

UNITED STATES COAST GUARD COURT OF CRIMINAL APPEALS

Washington, DC

UNITED STATES

v.

David A. KEALA

Damage Controlman Second Class, U.S. Coast Guard

CGCMS 24164

Docket No. 1111

7 December 1999

Special Court-Martial convened by Commander, Coast Guard Pacific Area, Alameda, California. Tried at Honolulu, Hawaii, on 2 and 3 November 1998.

Military Judge: CDR Thomas R. Cahill, USCG

Trial Counsel: LT Derek A. D Orazio, USCG

Assistant Trial Counsel: LT Ross L. Sargent, USCG

Civilian Defense Counsel: Samuel P. King, Jr., Esquire

Detailed Defense Counsel: LT Richard M. Harper II, JAGC, USNR

Appellate Defense Counsel: LT Sandra K. Selman, USCGR

Appellate Government Counsel: LTJG Mark A. Cunningham, USCGR

**BEFORE
PANEL FIVE**

BAUM, WESTON, McCLELLAND

Appellate Military Judges

PER CURIAM:

Appellant was tried by a special court-martial before a military judge sitting alone. Pursuant to his pleas, entered in accordance with a pretrial agreement, he was convicted of four specifications of assault in violation of Article 128 of the Uniform Code of Military Justice (UCMJ), and one specification of indecent assault in violation of Article 134, UCMJ. The judge sentenced the appellant to a Bad Conduct Discharge, reduction to pay grade E-2, confinement for four months and forfeiture of \$500.00 of pay per month for six months. The convening authority approved the sentence as adjudged and as authorized by the pretrial agreement.

Before this Court, without admitting that the findings and sentence are correct in law and fact, Appellant has submitted this case on its merits as to any and all errors. We have reviewed the record in accordance with Article 66, UCMJ. Upon such review, we have determined that

the findings and sentence are correct in law and fact and on the basis of the entire record should be approved. Accordingly, the findings and sentence, as approved below, are affirmed.

Weston, Judge (concurring):

I agree that the sentence in this case is appropriate, and Appellant does not argue otherwise. However, I write separately because I am impressed by Appellant s accomplishments as a volunteer at the Triservice Addiction Recovery Facility, Tripler Army Medical Center. I also find his acceptance of personal responsibility noteworthy, including his acceptance without complaint of his sentence, despite his desire to remain on active duty. In my opinion, FADC Keala s actions evince a rehabilitation that deserves careful consideration by the Coast Guard Clemency Board.

For the Court,

//s//

Mary Jane Eskandari
Clerk of the Court
