

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Khalil R. KEARNEY
Operation Specialist
Second Class (E-5)
U.S. Navy,

Appellant

SUPPLEMENT TO PETITION FOR
GRANT OF REVIEW

USCA Dkt. No. 26-0271/NA

Crim. App. Dkt. No. 202500063

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

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Subject Index

Table of Authorities	iii
Issues Presented	1
Introduction	2
Statement of Statutory Jurisdiction.....	2
Statement of the Case.....	3
Statement of Facts.....	4
Reasons to Grant Review	8
Appellant’s sentence is inappropriately severe because it (1) lacks relative uniformity with the sentences awarded for other cases similar in both nature and seriousness (2) is greater than those awarded for more serious offenses, and (3) will discourage future guilty pleas from penitent offenders.	8
A. Appellant’s sentence is inappropriately severe because it lacks relative uniformity with the sentences awarded for similar offenses.....	9
1. Appellant received eight years more confinement than the next highest sentence for the same offenses.	12
B. Appellant received more confinement than cases involving convictions for more serious offenses.	14
C. Appellant’s sentence will have a chilling effect on future guilty pleas. ..	17
Certificate of Compliance	20
The lower court abused its discretion by relying on misinterpretations of Appellant’s argument in deciding whether his sentence is inappropriately severe.	1
A. The lower court misinterpreted Appellant’s reference to closely related cases under the binding definition set forth in <i>United States v.</i> <i>Kelly</i>	1
B. The lower court misinterpreted Appellant’s reference to persuasive authority.....	2

C. The lower court misstated Appellant’s reference to cases receiving less punishment than Appellant for more serious offenses.	4
D. The lower court refused to correct the factual errors that the Government acknowledged.	6
The lower court’s opinion relied on an unnecessary review of sealed exhibits.	7

Table of Authorities

Cases

<i>Corbitt v. New Jersey</i> , 439 U.S. 212 (1978)	17
<i>Santobello v. New York</i> , 404 U.S. 257 (1971)	17
<i>United States v. Durant</i> , 55 M.J. 258 (C.A.A.F. 2001)	8, 10, 11
<i>United States v. Grostefon</i> , 12 M.J. 431 (C.M.A. 1982)	1, 19
<i>United States v. Kelly</i> , 40 M.J. 558 (N-M.C.M.R. 1994)	6, 7, 9, 10, 11
<i>United States v. Lacy</i> , 50 M.J. 286 (C.A.A.F. 1999)	8, 10, 11
<i>United States v. Wacha</i> , 55 M.J. 266 (C.A.A.F. 2001)	11
<i>United States v. Washington</i> , 431 U.S. 181, (1977)	17

Statutes

10 U.S.C. § 856 (2024)	17, 18
10 U.S.C. § 866(d) (2018).	18

Other Authorities

Joint Rules of Appellate Procedure (2022)	7, 8, 11
<i>Record of Trial for United States v. Andrew Potts</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Potts_A._bARHU1Z.pdf (last modified Jan. 21, 2025)	13, 14
<i>Record of Trial for United States v. Bradley Crager</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Crager_B..pdf (last modified Aug. 31, 2023)	13, 14

<i>Record of Trial for United States v. Chase R. Poller.</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Poller_Chase_HMrFLp3.pdf (last modified Apr. 29, 2026)	15
<i>Record of Trial for United States v. Gregory Cope</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Cope_G..pdf (last modified June 15, 2021)	13
<i>Record of Trial for United States v. Isaiah S. Marshall</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Marshall_Isaiah_S..pdf (last modified May. 10, 2024).	16
<i>Record of Trial for United States v. Joshua C. Murphy</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Murphy_Joshua_C..pdf (last modified July 2, 2026)	15
<i>Record of Trial for United States v. Joufher B. Espejo</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Espejo.J.pdf (last modified June 17, 2023)	15
<i>Record of Trial for United States v. Kevin H. Harter</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Harter_K..pdf (last modified Dec. 1, 2023)	15
<i>Record of Trial for United States v. Leon Murphy</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Murphy_Jr._L..pdf (last modified May 17, 2024)	12, 14
<i>Record of Trial for United States v. Nicholas J. Bullock</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Bullock_N..pdf (last modified Aug. 31, 2023)	16

<i>Record of Trial for United States v. Sage Treadwell</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Treadwell_Sage_X..pdf (last modified May 6, 2025)	12
<i>Record of Trial for United States v. Samuel A. Ventura</i> , Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Ventura_S._kMLu0mI.pdf (last modified Apr. 22, 2026)	16
Rule for Court Martial 1002	17
United States Court of Appeals for The Armed Forces Rules of Practice And Procedure	8, 11, 18

Issue Presented¹

Whether a sentence is inappropriately severe when it (1) lacks relative uniformity with the sentences awarded for other cases similar in both nature and seriousness, (2) is greater than the sentences awarded for more serious offenses, and (3) will discourage future guilty pleas from penitent offenders.

¹ Appellant raises two additional issues in Appendix A under *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Introduction

Before the Navy was aware of any wrongdoing, Appellant self-reported to Naval Criminal Investigative Service (NCIS) that he had accessed and shared links to pre-existing folders containing child pornography via an online file-sharing service. During the more than three years it took the Government to bring him to trial, Appellant continued to be a productive member of the Armed Forces and even received a recommendation for retention and advancement. At trial, Appellant pled guilty without the protection of a plea agreement and expressed genuine remorse for his actions. But rather than giving him credit for all these mitigating factors, the military judge imposed thirteen years of confinement—eight years more than any sentence imposed for comparable offenses since at least 2021.

In affirming Appellant's disparate sentence, the lower court ignored its own binding case law—as well as guidance from this Court—by refusing to compare it to similarly situated offenses. Further, the inappropriately severe sentence imposed on Appellant risks discouraging future guilty pleas, thereby undermining the interests of justice, good order and discipline, and respect for the law within the United States Armed Forces. For these reasons, review is appropriate.

Statement of Statutory Jurisdiction

Appellant submitted a timely appeal to the Navy-Marine Corps Court of Criminal Appeals (NMCCA), which reviewed the case under Article 66(b),

Uniform Code of Military Justice (UCMJ). Appellant invokes this Court’s Article 67(a)(3), UCMJ, jurisdiction.

Statement of the Case

A military judge sitting as a general court-martial convicted Appellant, pursuant to his pleas, of possession and distribution of child pornography in violation of Article 134, UCMJ.² A panel of members acquitted Appellant, consistent with his pleas, of rape and sexual abuse of a child in violation of Article 120b, UCMJ.³ The military judge sentenced him to 156 months’ confinement, reduction to pay grade E-1 and a dishonorable discharge.⁴ Appellant raised one assignment of error asserting his sentence was inappropriately severe and the lower court affirmed the finding and sentence.⁵ Appellant filed a motion to reconsider and a subsequent motion to consider en banc. The lower court summarily denied both.⁶

² R. at 235-36; Entry of Judgment at 1 (Jan. 28, 2025).

³ R. at 625; Entry of Judgment at 1 (Jan. 28, 2025).

⁴ R. at 709; Entry of Judgment at 2 (Jan. 28, 2025.)

⁵ *United States v. Kearney*, No. 202500063, slip op. (N-M. Ct. Crim. App. Mar. 26, 2026).

⁶ Email Denying Appellant’s Mot. to Recon., Apr. 30, 2026; Email Denying Appellant’s Mot. to Recon. En Banc., June 23, 2026.

Statement of Facts

In March 2021, Appellant self-reported to the Naval Criminal Investigative Service (NCIS) that he had accessed and shared links to preexisting folders containing child pornography via an online file-sharing service.⁷ Prior to his self-report, the Navy was not aware of any misconduct.⁸ During the more than three years Appellant spent awaiting trial, he was never placed in pre-trial confinement.⁹ Rather, during this entire time, he continued to perform, resulting in his command recommending him for retention and advancement.¹⁰ When he was finally brought to trial in 2024, Appellant pled guilty, without the protection of a plea agreement, and apologized for the offenses.¹¹

Within the folders Appellant accessed, there were approximately 100 still images and 1,700 videos of sexual material involving children.¹² Appellant admitted only to viewing several videos of minors (approximately 13-17 years old) dancing in a “sexually provocative, suggestive way” and one video of three children (approximately 12-13 years old) engaging in sexual activity outdoors.¹³

⁷ Appellate Ex. V.

⁸ *Id.*

⁹ R. at 621.

¹⁰ Def. Ex. A at 2.

¹¹ R. at 191-92, 692.

¹² R. at 645.

¹³ R. at 207-09.

The investigating agent testified that some of the other videos within the linked folders were “the most egregious and the most heinous” he had seen in his career.¹⁴ However, the agent also acknowledged he could not tell whether Appellant viewed any of the files or created any of the folders.¹⁵

During presentencing, the military judge allowed the Government to introduce a “representative sampling” of the more egregious child pornography as Prosecution Exhibit 3 (PE 3).¹⁶ The Defense objected that the evidence was cumulative and unreasonably prejudicial.¹⁷ The Defense’s objection ostensibly also included emails that were referenced, but not preserved as Appellate Exhibits.¹⁸ After viewing and considering the “representative sampling” the military judge sentenced Appellant to 156 months of confinement.¹⁹

On appeal, Appellant raised sentence appropriateness.²⁰ He argued that his sentence lacks relative uniformity with other convictions for the same offenses and failed to properly account for mitigating circumstances.²¹ In his brief, Appellant

¹⁴ R. at 650.

¹⁵ R. at 162.

¹⁶ R. at 640; Pros. Ex. 3.

¹⁷ R. at 637-39.

¹⁸ *Id.* at 638 (“Defense, aside from your emails, is there anything else that you wanted to add to your objection on cumulative?”); *see* Appellate Exs. I-LXIV.

¹⁹ R. at 235-36; Entry of Judgment at 1.

²⁰ *Kearney*, slip op. at 4.

²¹ Appellant’s Br.

referenced three other cases with the same convictions—each resulting in less than half of Appellant’s confinement—for the proposition that they should be compared as “closely related” under the definition put forth in *United States v. Kelly*.²² Nevertheless, the lower court affirmed the sentence, stating “there is no mandate for us to compare” cases that “involved convictions of the same charges for which Appellant was convicted.”²³

The lower court’s opinion also contained several factually inaccurate statements regarding Appellant’s filings.²⁴ Specifically, the lower court’s opinion misstated (1) the number of cases Appellant referenced,²⁵ (2) the legal proposition for which the cases were referenced,²⁶ (3) the existence of citations to those cases,²⁷ and (4) Appellant’s reference to subsequent legislation as persuasive, rather than binding, authority.²⁸

Appellant filed a motion to reconsider, arguing that the lower court’s opinion (1) failed to comply with *Kelly*, and (2) did not consider the chilling effect

²² Appellant’s Br. at 4 (citing *United States v. Kelly*, 40 M.J. 558, 570 (N-M.C.M.R. 1994).

²³ *Kearney*, slip op. at 5.

²⁴ Appellant’s Mot. to Recon.; Appellant’s Mot. to Recon. En Banc.

²⁵ *Kearney*, slip op. at 5.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 6.

Appellant’s sentence will have on future guilty pleas.²⁹ Appellant’s motion to reconsider also requested correction of the factual errors regarding the content of his filings.³⁰

The Government filed an opposition to Appellant’s motion, arguing against his interpretation of *Kelly* as well as his position that the lower court’s decision would have a chilling effect.³¹ But the Government explicitly stated it had no objection to Appellant’s request that the lower court correct its factual errors.³² The lower court summarily denied Appellant’s motion.³³

In response, Appellant filed a motion for en banc reconsideration arguing that—under its own rules—“only the Court en banc may overrule” *Kelly*’s binding definition of “closely related offenses.”³⁴ Additionally, Appellant again requested a correction of the factual errors regarding the content of his filings.³⁵ Again, the lower court summarily denied Appellant’s motion.³⁶

²⁹ Appellant’s Mot. to Recon. (citing *Kelly*, 40 M.J. at 570).

³⁰ *Id.*

³¹ Gov’t Opp. to Appellant’s Mot. to Recon.

³² *Id.* at 3.

³³ Email Denying Appellant’s Mot. to Recon.

³⁴ Appellant’s Mot. to Recon. En Banc at 16 (citing Joint R. of Appellate Proc. 27 (2022)).

³⁵ *Id.* at 2-14, 16-17.

³⁶ Email Denying Appellant’s Mot. to Recon. En Ban.

Reasons to Grant Review

Appellant’s sentence is inappropriately severe because it (1) lacks relative uniformity with the sentences awarded for other cases similar in both nature and seriousness (2) is greater than those awarded for more serious offenses, and (3) will discourage future guilty pleas from penitent offenders.

“The Court of Criminal Appeals is statutorily required to ensure that a military accused receives a correct and appropriate sentence. . . . In *United States v. Lacy*, [this Court] recognized that the Court of Criminal Appeals is primarily responsible for ensuring *at least* ‘relative uniformity’ in sentencing.”³⁷ Here, the lower court failed to do so by declining to consider and compare other sentences in cases that are “similar in both nature and seriousness” to Appellant’s. The lower court’s opinion effectively overruled one of *Kelly*’s two definitions of “closely related.” But “only the Court en banc may overrule a binding precedent.”³⁸ This departure from “the accepted and usual course of judicial proceedings” warrants this Court’s review.³⁹

³⁷ *United States v. Durant*, 55 M.J. 258, 263 (C.A.A.F. 2001) (Sullivan J., concurring) (citing *United States v. Lacy*, 50 M.J. 286, 287-88 (C.A.A.F. 1999)) (emphasis added).

³⁸ Joint R. of Appellate Proc. 27 (2022).

³⁹ See C.A.A.F. R. 21(b)(5)(B), (F).

A. Appellant’s sentence is inappropriately severe because it lacks relative uniformity with the sentences awarded for similar offenses.

In *Kelly*—a published and binding opinion—the lower court defined “closely related cases” as those that are “[1] similar in both nature and seriousness or [2] which arise from a common scheme or design.”⁴⁰ And although the lower court acknowledged that Appellant cited comparable cases involving “the same charges for which Appellant was convicted [i.e. possession and distribution of child pornography],” it went on to declare that “[n]one of these cases is closely related to Appellant’s misconduct.”⁴¹ The lower court appears to have based this determination on finding that there was no common scheme or direct nexus between Appellant’s case and those he cites for comparison.

But a lack of common scheme or direct nexus is not dispositive. There is an alternate test the lower court failed to apply. The specific use of the word “or” in *Kelly* makes clear that there are two distinct categories the court must consider separately. Here, the lower court acknowledged that Appellant’s case involves the “same charges” as those he cites for comparison.⁴² Logically, that establishes that

⁴⁰ *Kelly*, 40 M.J. at 570.

⁴¹ *Kearney*, slip op. at 5.

⁴² *Id.*

the offenses were at least *similar*.⁴³ The lower court had an obligation to “ensure at least ‘relative uniformity’” in these sentences.”⁴⁴ But it failed to do so.

The lower court’s error stems from a misreading of *Lacy* and its progeny.⁴⁵ In *Lacy*, this Court noted that one example of “closely related” are those cases that involve “coactors involved in a common crime.”⁴⁶ But it was also clear this was a non-exhaustive example, as it noted in a parenthetical.⁴⁷

The lower court apparently interpreted *Lacy* as having overruled the first of *Kelly*’s two definitions for “closely related,” thereby rendering it meaningless.⁴⁸ It did not. Neither the *Lacy* Court nor the lower court has overruled any part of *Kelly*. In fact, *Lacy* cites to *Kelly*, noting the benefit of the lower court providing reasoning for highly disparate sentences.⁴⁹

Therefore, the first prong of the *Kelly* definition of “closely related” remains valid. And when sentences “involve offenses that are similar in both *nature and seriousness*,” the lower court must “decide whether the disparity in disposition or

⁴³ See *Kelly*, 40 M.J. at 570.

⁴⁴ *United States v. Durant*, 55 M.J. 258, 263 (C.A.A.F. 2001) (Sullivan J., concurring) (citing *United States v. Lacy*, 50 M.J. 286, 287-88 (1999)) (emphasis added).

⁴⁵ *Kearney*, slip op. at 5 n.22-23.

⁴⁶ *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999).

⁴⁷ *Id.*

⁴⁸ See *Kelly*, 40 M.J. at 570.

⁴⁹ *Lacy*, 50 M.J. at 288.

sentence results from good and cogent reasons.”⁵⁰ This aligns with this Court’s guidance that “the Court of Criminal Appeals is primarily responsible for ensuring *at least* ‘relative uniformity’ in sentencing.”⁵¹ The lower court failed to do this in Appellant’s case.

Further, in *United States v. Wacha*, this Court noted that “[n]othing in *Lacy* or its progeny suggests any limitation on a Court of Criminal Appeals’ discretion to consider and compare other courts-martial sentences when that court is reviewing a case for sentence appropriateness and relative uniformity.”⁵² It went on to explain that “[i]f the Court of Criminal Appeals did misinterpret our decision in *Lacy* and felt constrained to specifically limit its comparison of sentences to closely related cases with disparate sentences *among co-actors, that court erred.*”⁵³

Regardless, the lower court’s opinion did not heed *Wacha* and effectively overruled *Kelly*’s first definition of “closely related.” But “only the Court en banc may overrule a binding precedent.”⁵⁴ This departure from “the accepted and usual course of judicial proceedings” warrants this Court’s review.⁵⁵

⁵⁰ *Kelly*, 40 M.J. at 570.

⁵¹ *United States v. Durant*, 55 M.J. 258, 263 (C.A.A.F. 2001) (citing *United States v. Lacy*, 50 M.J. 286, 287-88 (1999)) (emphasis added).

⁵² *United States v. Wacha*, 55 M.J. 266, 267 (C.A.A.F. 2001).

⁵³ *Id.*

⁵⁴ Joint R. of Appellate Proc. 27 (2022).

⁵⁵ See C.A.A.F. R. 21(b)(5)(B), (F).

1. Appellant received eight years more confinement than the next highest sentence for the same offenses.

Since 2021, only six Navy cases have resulted in convictions solely for possession and distribution of child pornography (*i.e.*, no convictions for any offenses other than possession and distribution of child pornography):

Case	Total Resulting Convictions	Confinement (months)
<i>U.S. v. Kearney</i> ⁵⁶	1 spec. possessing child pornography; 1 spec. distributing child pornography.	156
<i>U.S. v. Murphy</i> ⁵⁷	1 spec. possessing child pornography; 1 spec. distributing child pornography.	60
<i>U.S. v. Treadwell</i> ⁵⁸	1 spec. possessing child pornography; 1 spec. distributing child pornography.	48

[continued next page]

⁵⁶ Entry of Judgment at 1-2 (Jan. 28, 2025).

⁵⁷ *Record of Trial for United States v. Leon Murphy*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Murphy_Jr._L..pdf (last modified May 17, 2024).

⁵⁸ *Record of Trial for United States v. Sage Treadwell*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Treadwell_Sage_X..pdf (last modified May 6, 2025).

Case	Total Resulting Convictions	Confinement (months)
<i>U.S. v. Potts</i> ⁵⁹	1 spec. possessing child pornography; 2 specs. distributing child pornography.	36
<i>U.S. v. Crager</i> ⁶⁰	1 spec. possessing child pornography; 1 spec. distributing child pornography.	23
<i>U.S. v. Cope</i> ⁶¹	2 specs. possessing child pornography; 1 spec. distributing child pornography.	6

Appellant received eight to twelve-and-a-half years more confinement for the same crimes. Excluding Appellant, the average sentence of confinement is approximately thirty-five months—***121 months fewer than Appellant’s sentence.*** Even factoring in Appellant’s sentence of 156 months, the average is still only approximately fifty-nine months—***ninety-seven months fewer than Appellant’s sentence.*** Regardless of how these numbers are presented, 156 months of confinement is not within “relative uniformity” of the six-to-sixty-month sentencing range encompassing all other convictions for the same offenses.

⁵⁹ *Record of Trial for United States v. Andrew Potts*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Potts_A._bARHU1Z.pdf (last modified Jan. 21, 2025).

⁶⁰ *Record of Trial for United States v. Bradley Crager*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Crager_B..pdf (last modified Aug. 31, 2023).

⁶¹ *Record of Trial for United States v. Gregory Cope*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Cope_G..pdf (last modified June 15, 2021).

This disparity is especially inexplicable given that none of Appellant’s specifications were withdrawn because the Government refused to offer Appellant a plea deal.⁶² Whereas, three of the five other cases had specifications that were withdrawn—ostensibly as part of plea deals.

1. Petty Officer Leon Murphy had four specifications of distribution of child pornography and one specification possession of child pornography withdrawn and dismissed.⁶³
2. Petty Officer Andrew Potts had two specifications of possession of child pornography withdrawn and dismissed.⁶⁴
3. Petty Officer Bradley Crager had one specification possession of child pornography withdrawn and dismissed.⁶⁵

B. Appellant received more confinement than cases involving convictions for more serious offenses.

Since 2021, there have been a total of sixty Navy cases that included (among other charges) a conviction for possessing child pornography.⁶⁶ Appellant received

⁶² Appellate Ex. XLIII at 3.

⁶³ *Record of Trial for United States v. Leon Murphy* at 20.

⁶⁴ *Record of Trial for United States v. Andrew Potts* at 20.

⁶⁵ *Record of Trial for United States v. Bradley Crager* at 17.

⁶⁶ This statement is offered for statistical context. Counsel can provide a complete list of cases and URLs if the Court should so desire. Data was obtained from review of the Navy’s published trial results. *Navy Trial Results*, Navy JAG Corps, <https://www.jag.navy.mil/military-justice/trial-results/> (last visited July 23, 2026).

more confinement than all but two.⁶⁷ Understandably, those two cases also included convictions for more serious offenses.⁶⁸ However, even among the cases that received *less* confinement than Appellant, many were *also* convicted of offenses that are objectively more serious than Appellant's. For example:

1. Petty Officer Joshua C. Murphy was also convicted of raping a child under the age of twelve and received only 108 months of confinement—***forty-eight months fewer than Appellant.***⁶⁹
2. Seaman Kevin. H. Harter was also convicted of soliciting a minor to produce child pornography, offering to pay a minor for sex, and assaulting a minor by unlawfully touching her thigh.⁷⁰ He received only 102 months confinement—***fifty-four months fewer than Appellant.***

⁶⁷ *Record of Trial for United States v. Jousher B. Espejo*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, <https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Espejo.J.pdf> (last modified June 17, 2023); *Record of Trial for United States v. Chase R. Poller.*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Poller_Chase_HMrFLp3.pdf (last modified Apr. 29, 2026).

⁶⁸ *Id.* at 120; *Record of Trial for United States v. Chase R. Poller* at 19, 24.

⁶⁹ *Record of Trial for United States v. Joshua C. Murphy*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Murphy_Joshua_C..pdf (last modified July 2, 2026).

⁷⁰ *Record of Trial for United States v. Kevin H. Harter*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Harter_K..pdf (last modified Dec. 1, 2023).

3. Seaman Samuel A. Ventura was also convicted of soliciting a minor to produce child pornography and sexual abuse of a child through indecent language.⁷¹ He received only sixty-six months confinement—***ninety months fewer than Appellant.***
4. Petty Officer Isaiah Marshall was also convicted of assaulting his “intimate partner”—who was a minor.⁷² He received only forty-eight months confinement—***108 months fewer than Appellant.***
5. Seaman Nicholas J. Bullock was also convicted of sexually assaulting a child by performing oral sex on the child and penetrating her mouth and vulva with his penis and finger.⁷³ He received only twenty-eight months confinement—***128 months fewer than Appellant.***

In addition to possessing child pornography, these offenders also raped, physically abused, or assaulted children and received substantially less

⁷¹ *Record of Trial for United States v. Samuel A. Ventura*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Ventura_S._kMLu0mI.pdf (last modified Apr. 22, 2026).

⁷² *Record of Trial for United States v. Isaiah S. Marshall*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Marshall_Isaiah_S..pdf (last modified May. 10, 2024).

⁷³ *Record of Trial for United States v. Nicholas J. Bullock*, Navy-Marine Corps Court Filings & Records - Navy JAG Corps, https://stjececmsdusgva001.blob.core.usgovcloudapi.net/public/documents/Bullock_N..pdf (last modified Aug. 31, 2023).

confinement than Appellant—who never touched or spoke to a child in the course of his offenses.

C. Appellant’s sentence will have a chilling effect on future guilty pleas.

Article 56, UCMJ, requires that sentences must be “sufficient, but not greater than necessary, to promote justice and maintain good order and discipline in the United States Armed Forces, taking into consideration . . . the need for the sentence . . . to promote respect for the law”⁷⁴ These considerations are consistent with what the Supreme Court has acknowledged is a “legitimate interest in encouraging the entry of guilty pleas.”⁷⁵ “Indeed, far from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently desirable.”⁷⁶ Consequently, determining whether a sentence promotes justice and respect for the law must include considering whether it encourages other offenders to plead guilty.⁷⁷ But no encouragement exists if an honest admission will only result in a disparately harsh sentence as it did here.

Despite confessing (before the Navy was even aware of any misconduct) and pleading guilty, Appellant received the highest sentence in recent history for his

⁷⁴ 10 U.S.C. § 856 (2024); *see* R.C.M 1002(c).

⁷⁵ *Corbitt v. New Jersey*, 439 U.S. 212, 222 (1978); *see also Santobello v. New York*, 404 U.S. 257, 261 (1971).

⁷⁶ *United States v. Washington*, 431 U.S. 181, 182 (1977).

⁷⁷ *Cf.* 10 U.S.C. § 856(c) (2018) (“ . . . taking into consideration . . . the need for the sentence . . . to promote respect for the law”).

offenses. The lower court's affirmation of that sentence—eight years in excess of the next closest sentence—fails to foster the type of honesty and cooperation Appellant has shown. Indeed, why would an accused confess and plead guilty if it might result in possibly the highest sentence ever awarded for his crimes? The lower court's opinion departs from the Supreme Court's guidance and fails to apprehend its own responsibility to only affirm sentences that promote justice and respect for the law.⁷⁸ Accordingly, Appellant respectfully request this Court grant review.⁷⁹

Conclusion

Appellant respectfully requests this Court grant review to provide much needed guidance to the field regarding sentence appropriateness review.

Respectfully submitted,

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⁷⁸ 10 U.S.C. §§ 856(c), 866(d) (2018).

⁷⁹ See C.A.A.F. R. 21(b)(5)(B).

Appendix

A. Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

B. *United States v. Kearney*, No. 202500063, slip op. (N-M. Ct. Crim. App. Mar. 26, 2026).

Certificate of Compliance

This brief complies with the type-volume limitations of Rule 21 and 37 because it contains 3,438 words, and it has been prepared in 14-point, Times New Roman font.

//s//

Jesse B. Neumann
LT, JAGC, USN
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Certificate of Filing and Service

I certify that a copy of the foregoing was delivered to the Court and delivered to the Director, Appellate Government Division (Code 46), at DACCode46@navy.mil and to the Deputy Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity (Code 40), at Joshua.D.Ricafrente.civ@us.navy.mil on September 28, 2026.

//s//

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Appendix A:

Submission under *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, Appellant, through appellate defense counsel, requests that this Court consider the following matters:

I

The lower court abused its discretion by relying on misinterpretations of Appellant’s argument in deciding whether his sentence is inappropriately severe.

“Service courts abuse their discretion when they act arbitrarily, capriciously, or unreasonably as a matter of law.”⁸⁰ Further, military judges abuse their discretion when they predicate a ruling on erroneous facts or fail to consider important facts.⁸¹ Here, the lower court’s opinion included and relied upon several factually inaccurate statements concerning Appellant’s filings, and the court arbitrarily declined to correct those errors. These inaccuracies call into question whether the lower court’s opinion is supported by sound reasoning.

A. The lower court misinterpreted Appellant’s reference to closely related cases under the binding definition set forth in *United States v. Kelly*.

The lower court acknowledged that “Appellant cite[d] three other cases . . . which involved convictions of the same charges” but then incorrectly stated

⁸⁰ *United States v. Arroyo*, 86 M.J. 89, 93 (C.A.A.F. 2025) (citing *United States v. Flores*, 84 M.J. 277, 282 (C.A.A.F. 2024)).

⁸¹ *United States v. Commisso*, 76 M.J. 315, 321 (C.A.A.F. 2017).

“Appellant does not claim that any of these cases are closely related to his case.”⁸²

While Appellant did not talismanically assert that the cited cases were “closely related,” this was clearly his position:

Indeed, when other sentences “involve offenses that are *similar in both nature and seriousness*,” they are “label[ed] as closely related” and require this Court to “decide whether the disparity in disposition or sentence results from good and cogent reasons.” . . . Despite being convicted of offenses *similar in both nature and seriousness* to Appellant’s convictions, the other three servicemembers received terms of confinement of 60 months, 48 months, and 36 months.⁸³

This language clearly conveyed that Appellant argued the cited cases were “closely related” to his and should be compared to assess his sentence. Indeed, this is precisely what Appellant has argued that *Kelly* requires. Therefore, the lower court misinterpreted Appellant’s argument regarding these comparable cases and failed to properly apply *Kelly*.

B. The lower court misinterpreted Appellant’s reference to persuasive authority.

In its opinion, the lower court stated:

Appellant appears to conflate the standards of review for his case with that which is applicable to cases in which an accused’s offenses occurred after the effective date of the sentencing reform provisions of the National Defense Authorization Act for Fiscal Year 2022 (FY 2022 NDAA).⁸⁴

⁸² *Kearney*, slip op. at 5.

⁸³ Appellant’s Br. at 3-4 (quoting *Kelly*, 40 M.J. at 570) (emphasis added).

⁸⁴ *Kearney*, slip op. at 6.

This is incorrect for two reasons. First, Appellant plainly presented the correct standard of review for his case:

Standard of Review

Sentence appropriateness is reviewed de novo.¹¹

Discussion

Whether a sentence is appropriate “requires an ‘individualized consideration of the particular accused on the basis of the nature and seriousness of the offense and the character of the offender.’”¹² “This Court’s ‘power to review a case for

85

Second, Appellant discussed the FY 2022 NDAA only as persuasive, non-binding authority. The *first five words* of that discussion expressly acknowledged that the recent update to the law was not binding on Appellant’s case:

Although not at play here, the President recently began requiring that military judges provide explicit reasoning when departing from the relative uniformity of sentences for similar offenses. Indeed, in order to deviate from a

86

Accordingly, the lower court’s opinion is incorrect. Appellant referenced the FY 2022 NDAA only as persuasive authority in support of his argument that

⁸⁵ Appellant’s Br. at 3.

⁸⁶ *Id.* at 10.

his sentence should either conform to relative uniformity or receive an explanation for its disparity.⁸⁷

C. The lower court misstated Appellant’s reference to cases receiving less punishment than Appellant for more serious offenses.

The lower court’s opinion incorrectly states that “Appellant . . . references, *without citation*, 41 other cases against Naval servicemembers . . . making the argument that those servicemembers received lesser sentences for more serious conduct.”⁸⁸ This is incorrect. Appellant referenced only **sixteen** cases for this proposition and provided a citation to the location of their records of trial:

children, or (4) producing child pornography. Of the offenders receiving *less* confinement than Appellant, sixteen were convicted of either (1) sexually abusing children or (2) *producing* child pornography.²⁰ By contrast, Appellant was only convicted of possession and distribution of child pornography, which he voluntarily pleaded guilty to after reporting himself to the authorities.

⁸⁷ *Id.* at 9-10.

⁸⁸ *Kearney*, slip op. at 5 (emphasis added).

USN, HMS Chase Force, USN)

²⁰ *Id.*; see Navy-Marine Corps Court Filings & Records, Navy Jag Corps, <https://www.jag.navy.mil/military-justice/filings-records/> (HM2 Dominic Vermurlen, USN; QMC Christopher Walls, USN; ABH2 Israel Marmolejo, Jr., USN; CSS1 Colton Blevins, USN; SBCS Gregory Boles, USN; MA2 Adam Pyron, USN; MIDN Tamere Smith, USN; SN Samuel Ventura, USN; AMAA Brayden Whiteman, USN; YNSN Tyler McCormick, USN; ITS1 Christopher Kraft, USN; CS2 Benjamin Sawyer, USN; ADAA Ethan Spenelli, USN; YNSA Damian Izguerra, USN; Pvt. Aiden Schlueter, USMC; LS1 Brynt Merritt, USN; ABHAN Jamar Davis, USN; EMFR Sergio Jacobo, USN).|

89

Accordingly, the lower court’s opinion is factually incorrect as to the number of cases that Appellant argued “received lesser sentences for more serious conduct.”⁹⁰ Further, the lower court’s assertion those cases were referenced “without citation” is demonstrably false.⁹¹

The lower court may have preferred a different variety of citation. However, the trial records for those cases are only publicly available at the court’s online database. Under these circumstances, the citation substantially complied with the adaptable internet citation principles present in Bluebook Rule 18.2.1 and readily facilitated review of the cases. Accordingly, Appellant’s references to these cases were not, as the lower court asserted, wholly “without citation.”

⁸⁹ Appellant’s Br. at 5.

⁹⁰ *Kearney*, slip op. at 5.

⁹¹ *Id.*

D. The lower court refused to correct the factual errors that the Government acknowledged.

Following issuance of the lower court's opinion, Appellant filed a motion to reconsider requesting, in part, that the factual errors be corrected:

For the foregoing reasons, Appellant requests that the Court reconsider its opinion and correct any factual errors therein.

Respectfully submitted.



92

The Government explicitly declined to oppose Appellant's request for correction of the misstatements:

The United States respectfully requests that this Court deny Appellant's Motion to Reconsider its decision but does not oppose the Motion insofar as it requests the Court correct scrivener's errors related to the number of cases Appellant cited or his references to persuasive authority.

93

Despite this, the lower court summarily refused to correct its errors—twice.⁹⁴ This arbitrary refusal raises questions of whether the lower court predicated its ruling on erroneous facts, failed to consider important facts, or considered the relevant holding of *Kelly*. Ultimately, the lower court's numerous

⁹² Appellant's Mot. to Recon.

⁹³ Gov't Opp. to Appellant's Mot. to Recon. at 3.

⁹⁴ Email Denying Appellant's Mot. to Recon.; Email Denying Appellant's Mot. to Recon. En Banc.

factual misinterpretations, and repeated refusal to correct them, so far departed from the accepted and usual course of judicial proceedings that review is warranted by this Court.⁹⁵ Accordingly, Appellant respectfully requests review.

II

The lower court’s opinion relied on an unnecessary review of sealed exhibits.

Service courts abuse their discretion when they act arbitrarily, capriciously, or unreasonably as a matter of law.”⁹⁶ RCM 1113 states that an appellate court “may examine sealed materials when those authorities *determine that examination is reasonably necessary*.”⁹⁷ Here, the lower court abused its discretion by independently reviewing sealed child pornography without asserting a reasonable necessity, and indeed there was none. Indeed, neither Government nor Defense appellate counsel required or sought to review the materials in the course of presenting their arguments.

In *United States v. Guy*, the Army Court of Criminal Appeals (ACCA) discussed the necessity of reviewing child pornography in a guilty plea by drawing comparisons to drug cases:

⁹⁵ C.A.A.F. R. 21(b)(5)(F).

⁹⁶ *United States v. Arroyo*, 86 M.J. 89, 93 (C.A.A.F. 2025) (citing *United States v. Flores*, 84 M.J. 277, 282 (C.A.A.F. 2024)).

⁹⁷ R.C.M. 1113(b)(3)(A).

When an accused pleads guilty to possessing illegal narcotics, there is no need to introduce the drugs (or even the lab report) as evidence in order for the military judge to accept the plea. *Nor on appeal* are the drugs forwarded to this court so that we may *independently verify* the drugs are what the accused admitted they are. *We see no reason why the offense of child pornography is different.*⁹⁸

This analogy is valid even beyond the act of accepting or rejecting a plea of guilt. Indeed, rather than independently reviewing contraband, courts routinely rely on the testimony of witnesses regarding the relevant qualities of contraband. This is particularly true in cases involving child pornography where “[o]ften the parties have stipulated, in detail, as to what the images depict and why they are child pornography.”⁹⁹ Here, the record is replete with uncontested testimony regarding what the child pornography in PE 3 depicted.

Appellant confessed that he had accessed and shared a link to pre-existing folders containing large quantities of child pornography.¹⁰⁰ Appellant admitted to opening and viewing a few specific files, which he then described.¹⁰¹ At trial, the Government elicited testimony from the investigating agent.¹⁰² The agent acknowledged there was no evidence that Appellant opened or viewed any of the

⁹⁸ *United States v. Guy*, No. ARMY 20180292, 2019 CCA LEXIS 129, at *3 (A. Ct. Crim. App. Mar. 21, 2019) (emphasis added).

⁹⁹ *Guy*, 2019 CCA LEXIS 129, at *4.

¹⁰⁰ Appellate Ex. V.

¹⁰¹ R. at 207-09.

¹⁰² R. at 650.

other files within the folders.¹⁰³ Regardless, he then described what some of those files depicted and stated they were some of “the most egregious and the most heinous” material he had seen in his career.¹⁰⁴ Accordingly, under these circumstances, it was not reasonably necessary for the lower court to independently review the “representative sample” offered as PE 3.¹⁰⁵ As the ACCA stated in *Guy*:

Most, if not all, military judges do not need to be educated that child pornography often involves the depiction of the rape and sexual abuse of infants, toddlers, and children. But, most importantly, child pornography involves real people who are done no great service when images of their rape as a child are needlessly included in a record for strangers to review.¹⁰⁶

This case presents an opportunity to provide guidance on what circumstances reasonably necessitate review of sealed materials during the review of an uncontested case—a question that this Court has not, but should, answer.¹⁰⁷ Accordingly, Appellant respectfully requests this Court grant review.

Conclusion

Appellant respectfully requests this Court grant review to provide much needed guidance to the field regarding the appropriateness of relying on

¹⁰³ R. at 162.

¹⁰⁴ *Id.*

¹⁰⁵ R. at 640.

¹⁰⁶ *Guy*, 2019 CCA LEXIS 129, at *4 (emphasis added).

¹⁰⁷ C.A.A.F. R. 21(b)(5)(A).

misinterpretations of an appellant's filings, and the review of sealed materials to assess sentence appropriateness in the context of a judge-alone guilty plea.

This opinion is subject to administrative correction before final disposition.

United States Navy-Marine Corps Court of Criminal Appeals

Before
GROSS, DALY, and de GROOT
Appellate Military Judges

UNITED STATES
Appellee

v.

Khalil R. KEARNEY
Operations Specialist Second Class (E-5), U.S. Navy
Appellant

No. 202500063

Decided: 26 March 2026

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judges:
Rachel E. Trest (arraignment)
Kimberly J. Kelly (motions)
Adam G. Partridge (trial)

Sentence adjudged 11 October 2024 by a general court-martial tried at Naval Air Station Jacksonville, Florida consisting of a military judge sitting alone. Sentence in the Entry of Judgment: reduction to E-1 and confinement for 156 months.¹

¹ The Entry of Judgment [EOJ] does not reflect the dishonorable discharge that the military judge announced. Although not raised by Appellant as an error, we take action in the decretal paragraph.

United States v. Kearney, NMCCA No. 202500063
Opinion of the Court

For Appellant:
Lieutenant Jesse B. Neumann, JAGC, USN

For Appellee:
Commander Jeremy R. Brooks, JAGC, USN
Captain Jacob R. Carmin, USMC

Senior Judge GROSS delivered the opinion of the Court, in which Chief Judge DALY and Judge de GROOT joined.

**This opinion does not serve as binding precedent but
may be cited as persuasive authority under
NMCCA Rule of Appellate Procedure 30.2.**

GROSS, Senior Judge:

Appellant was charged at a general court-martial with one specification of possession of child pornography, one specification of distribution of child pornography, two specifications of rape of a child, and one specification of sexual abuse of a child, in violation of Articles 134 and 120, Uniform Code of Military Justice (UCMJ).² Appellant entered mixed pleas and was convicted by a military judge, pursuant to his pleas, of possessing and distributing child pornography. A panel of members with enlisted representation acquitted Appellant of the remaining charge and specifications. The military judge sentenced Appellant to confinement for 156 months, reduction in paygrade to E-1, and a dishonorable discharge.

Appellant asserts one assignment of error (AOE): that the sentence Appellant received is inappropriately severe. We find no prejudicial error and affirm.

I. BACKGROUND

On 19 August 2020, Appellant created an account on the MEGA cloud storage service, which is a company based out of New Zealand.³ On 27 February 2021, he maintained access to the account, which at that time contained some

² 10 U.S.C. §§ 934, 920.

³ App. Ex. V at 2; R. at 655.

80,497 files.⁴ This included a folder titled “Who Daughter is This?” that contained roughly 1,700 videos and 100 images of child pornography. Appellant was aware that the file folder contained child pornography and admitted that he had saved the images and videos to that folder.⁵ On the same date, Appellant created a public link to the folder and shared that link to a MEGA group chat with about 70 or 80 other user accounts. Along with the link, Appellant sent a message to the group chat requesting more child pornography similar to what was contained in the link.⁶

On 15 March 2021, another MEGA user made a report to MEGA alleging that the link to the folder that Appellant had shared contained child pornography.⁷ Sometime after that, Appellant learned that MEGA had suspended his account. On 25 March 2021, Appellant walked into the Naval Criminal Investigative Service (NCIS) Resident Agency Yokosuka, Japan, and self-reported that he possessed and distributed child pornography.⁸

In his guilty plea inquiry, Appellant told the military judge that the files he recalled seeing contained images and videos of children between the ages of 12 and 17 dancing in a sexually provocative manner, and one video of children about 12-13 years old engaging in sexual intercourse.⁹ Appellant did not describe seeing any children under the age of 12 in his responses to the questions of the military judge.

At sentencing, the Government introduced a representative sample of the material contained in the MEGA folder that Appellant possessed and distributed. Naval Criminal Investigative Service Special Agent (SA) Alpha,¹⁰ who has worked in law enforcement for over 30 years and on hundreds of cases involving child pornography, testified regarding the contents of Appellant’s MEGA folder. He described the images and videos as containing severe abuse of children calling them both “heinous” and “egregious.”¹¹ New Zealand Department of Internal Affairs Senior Investigator Foxtrot also testified without

⁴ R. at 654.

⁵ R. at 212-14.

⁶ R. at 226, 228.

⁷ R. at 655.

⁸ App. Ex. V. at 2-3.

⁹ R. at 209-10.

¹⁰ All names other than those of Appellant, military judges, and appellate counsel are pseudonyms.

¹¹ R. at 650.

objection that “these types of links . . . even within the child sex offender community, are not commonly shared . . . because they’re so egregious that they don’t fit the sexual interests of some of those people.”¹² The videos included depictions of children as young as six months old being sexually abused, and “extreme depictions of child sexual abuse, bondage, [and] torture situations.”¹³

II. DISCUSSION

Appellant’s sentence was not inappropriately severe.

Appellant contends that his sentence is inappropriately severe because of a lack of relative uniformity to other cases, his self-report and confession, and the military judge’s lack of articulated reasoning for the length of the sentence to confinement he imposed. We disagree.

1. Standard of Review and Law

We review sentence appropriateness de novo.¹⁴ This Court may only affirm “the sentence or such part or amount of the sentence as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.”¹⁵ In exercising this function, we seek to ensure that “justice is done and that the accused gets the punishment he deserves.”¹⁶ Our review requires “an individualized consideration of the particular accused on the basis of the nature and seriousness of the offense and the character of the offender.”¹⁷ In making this assessment, we analyze the record as a whole.¹⁸

This Court’s “power to review a case for sentence appropriateness . . . includes but is not limited to considerations of uniformity and evenhandedness of sentencing decisions.”¹⁹ We have “discretion to consider and compare” other “sentences when . . . reviewing a case for sentence appropriateness and relative

¹² R. at 671.

¹³ R. at 658; *see also* Pros. Ex. 3.

¹⁴ *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

¹⁵ Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018).

¹⁶ *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

¹⁷ *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (citation and internal quotation marks omitted).

¹⁸ *Healy*, 26 M.J. at 395–97.

¹⁹ *United States v. Swisher*, 85 M.J. 1, 4 (C.A.A.F. 2024) (quoting *United States v. Sothen*, 54 M.J. 294, 296 (C.A.A.F. 2001)).

uniformity.”²⁰ We are not required “to engage in sentence comparison with specific cases except in those rare instances in which sentence appropriateness can be fairly determined only by reference to disparate sentences adjudged in closely related cases.”²¹ An appellant “bears the burden of demonstrating that any cited cases are ‘closely related’ to his or her case and that the sentences are ‘highly disparate.’”²² If the appellant meets that burden, then the Government “must show that there is a rational basis for the disparity.”²³

2. Lack of Uniformity

Appellant cites three other cases against Naval servicemembers from between February 2023 and February 2025 which involved convictions of the same charges for which Appellant was convicted.²⁴ None of these cases is closely related to Appellant’s misconduct, and there is no mandate for us to compare the sentences in those cases with Appellant’s. Appellant also references, without citation, 41 other cases against Naval servicemembers between February 2023 and February 2025 involving sexual offenses against children, making the argument that those servicemembers received lesser sentences for more serious conduct.

Appellant does not claim that any of these cases are closely related to his case, and we find that they are not. As a result, the Government is not required to show any rational basis for the disparity in the sentences. We therefore consider Appellant’s sentence not on the basis of any lack of uniformity with other closely related cases, but rather based upon our review of the record as a whole along with our collective knowledge of the military justice system.²⁵ In doing so, we find ample justification to support the adjudged sentence that Appellant received, as we discuss below.

²⁰ *Id.* (quoting *United States v. Wacha*, 55 M.J. 266, 267 (C.A.A.F. 2001)).

²¹ *United States v. Noble*, 50 M.J. 293, 294 (C.A.A.F. 1999) (quoting *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (internal quotation marks and additional citation omitted)); see also *Swisher*, 85 M.J. at 4 (citing *United States v. Behunin*, 83 M.J. 158, 161-162 (C.A.A.F. 2023)).

²² *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999).

²³ *Id.*

²⁴ Appellant’s Brief at 4 n.16.

²⁵ See *United States v. Ballard*, 20 M.J. 282, 286 (C.M.A. 1985) (Everett, C.J., concurring).

3. Appellant's Self-Report and Confession

Appellant's next argument is likewise unconvincing. It is true that Appellant went to NCIS on his own and confessed. And doing so in some cases may illustrate a certain level of remorse and acknowledgement of wrongdoing. It is also true that Appellant pleaded guilty, thereby saving the Government the expense of a contested trial on Charge I and its specifications. However, there are factors that reduce the strength of the mitigating nature of both of these acts.

First, we note that while Appellant confessed, he only did so *after* being notified that MEGA had suspended his account for a link that violated its terms of service. Second, while Appellant pleaded guilty, the Government's case by the time of trial was strong, as it included substantial digital forensic evidence along with Appellant's confession. While a military judge may consider an Appellant's acceptance of responsibility and plea of guilty as mitigation,²⁶ the value of such mitigation will almost certainly vary from case to case. In this case, Appellant's guilty plea, unsworn statement, and evidence in extenuation and mitigation, while certainly relevant to our analysis, was not overly compelling.

4. The Military Judge's Lack of Articulated Reasoning

Finally, Appellant appears to conflate the standards of review for his case with that which is applicable to cases in which an accused's offenses occurred after the effective date of the sentencing reform provisions of the National Defense Authorization Act for Fiscal Year 2022 (FY 2022 NDAA). The FY 2022 NDAA provides that the President shall set parameters that delineate sentencing ranges for an offense that is appropriate for a typical violation of the offense.²⁷ A military judge who adjudges a sentence outside of the presidentially-established parameters is required to "include in the record the factual basis for the sentence."²⁸

Here, Appellant's misconduct occurred prior to the applicability of the FY 2022 NDAA, and we thus will not base our decision on Appellant's case on that law. While it is true that the military judge did not articulate his reasoning for the sentence, we know of no rule—nor does Appellant cite one—requiring such

²⁶ R.C.M. 1001(g)(5).

²⁷ National Defense Authorization Act for the Fiscal Year 2022, Pub. L. No. 117-81, § 539E(e)(2)(A), 135 Stat. 1541, 1704.

²⁸ Article 56, UCMJ, 10 U.S.C. § 856(c)(2)(B)(2024).

United States v. Kearney, NMCCA No. 202500063
Opinion of the Court

an articulation.²⁹ The military judge, in arriving at an appropriate sentence, was required to “impose punishment sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline.”³⁰

We have no trouble concluding that he did that here. We base our decision on SA Alpha’s and Investigator Foxtrot’s sentencing testimony and the nature of the evidence, including our own independent review of the child pornography contained in Prosecution Exhibit 3, along with all other evidence admitted on sentencing. Given Appellant’s wrongful possession and distribution of these files, combined with his stated desire to obtain more of the same, we are convinced that Appellant’s sentence is not inappropriately severe and that Appellant received the sentence he deserved.

²⁹ We note that even if Appellant’s offenses had occurred after the effective date of the FY 2022 NDAA sentencing reform, that the parameters for Appellant’s offenses included 1-36 months for possession of child pornography, and 30-120 months for distribution of child pornography. *Manual for Courts-Martial, United States* (2024 ed.) app’x 12B, Sentencing Parameter Table; app’x 12C, Offense Category Chart, at A12C-1. The military judge’s sentence was segmented, and he adjudged 36 months for the possession specification and 120 months for the distribution specification. Thus, even if Appellant’s case were subject to the law he cites, he would be entitled to no relief for the lack of a written explanation for the military judge’s sentence.

³⁰ Article 56, UCMJ, 10 U.S.C. § 856.

III. CONCLUSION

After careful consideration of the record and briefs of appellate counsel, we have determined that the findings are correct in law, the sentence is correct in law and fact, and no error materially prejudicial to Appellant's substantial rights occurred.³¹ However, we note that the Entry of Judgment does not account for the dishonorable discharge imposed by the military judge. Appellant does not claim any prejudice from this omission, and we find none, however, Appellant is entitled to accurate court-martial records and we therefore modify the Entry of Judgment and direct that it be included in the record.

The findings and sentence are **AFFIRMED**.



FOR THE COURT:

Mark K. Jamison
MARK K. JAMISON
Clerk of Court

³¹ Articles 59 & 66, UCMJ, 10 U.S.C. §§ 859, 866.

United States Navy - Marine Corps Court of Criminal Appeals

UNITED STATES

v.

Khalil R. KEARNEY
Operations Specialist Second Class
(E-5)
U.S. Navy

Accused

NMCCA NO. 202500063

**ENTRY
OF
JUDGMENT**

As Modified on Appeal

26 March 2026

On 11 October 2024, the Accused was tried at Region Legal Service Office Southeast, Jacksonville, Florida, by a general court-martial, consisting of a military judge sitting alone. Military Judge Adam G. Patridge presided.

FINDINGS

The following are the Accused's pleas and the Court's findings to all offenses the convening authority referred to trial:

**Charge I: Violation of Article 134, Uniform Code of Military Justice,
10 U.S.C. § 934.**

Plea: Guilty.

Finding: Guilty.

**Specification 1: Wrongfully possessing child pornography from on or
about 27 February 2021 to on or about 15 March 2021.**

Plea: Guilty.

Finding: Guilty.

**Specification 2: Wrongfully distributing child pornography from on
about 21 February 2021 to on or about 15 March 2021.**

Plea: Guilty.

Finding: Guilty.

**Charge II: Violation of Article 120b, Uniform Code of Military Justice,
10 U.S.C. § 920b.**

Plea: Not Guilty.

Finding: Not Guilty.

**Specification 1: Sexual assault of a child involving sexual contact on
divers occasions from on or about October 2022 to on
or about March 2023 by touching the buttocks of J.W.
with his hand.**

Plea: Not Guilty.

Finding: Not Guilty.

**Specification 2: Rape of a child who had not attained the age of 12
years old on by placing his penis in the mouth of J.W.
on or about 21 March 2023.**

Plea: Not Guilty.

Finding: Not Guilty.

**Specification 3: Rape of a child who had not attained the age of 12
years old on by causing contact between the mouth of
J.W. and his penis on or about 21 March 2023.**

Plea: Not Guilty.

Finding: Not Guilty.

SENTENCE

On 11 October 2024, a military judge sentenced the Accused to the following:

Reduction to pay grade E-1.

Confinement

For Specification 1 of Charge I:
confinement for 36 months.

For Specification 2 of Charge I:
confinement for 120 months.

The terms of confinement will be served consecutively with each other.

Confinement for a total of 156 months.

A dishonorable discharge.



FOR THE COURT:

Mark K. Jamison
MARK K. JAMISON
Clerk of Court