January 20, 2023

IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,
Appellee,

v.

MELLODEE L. BEHUNIN,
Airman First Class (E-3), USAF
Appellant

Crim. App. No. S32684

USCA Dkt. No. 22-0276/AF

APPELLANT'S REPLY BRIEF

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Pursuant to Rule 19(a)(7)(B) of this Honorable Court's Rules of Practice and Procedure, Airman First Class (A1C) Mellodee Behunin, the Appellant, hereby replies to the Government's Answer (Ans.) concerning the granted issues, filed on January 11, 2023.

ARGUMENT

I.

WHETHER EXTRA-RECORD RESULTS OF OTHER COURTS-MARTIAL THAT WERE NOT PART OF THE RECORD OF TRIAL BEFORE APPELLANT'S CASE WAS DOCKETED AT THE CCA MAY BE CONSIDERED DURING ITS ARTICLE 66, UCMJ, REVIEW.

1. Post-docketing sentence comparison is consistent with this Court's precedents, including Jessie.[1]

In *United States v. Jessie*, this Court recognized that one class of its precedents, exemplified by *United States v. Brennan*,[2] permits Courts of Criminal Appeals (CCAs) to supplement the record to decide issues "raised by materials in the record but not fully resolvable by those materials." 79 M.J. at 445. In so doing, this Court reflected that it "has concluded based on experience that 'extra-record fact determinations' may be 'necessary predicates to resolving appellate questions' that arise

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[1] *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020).
[2] 58 M.J. 351 (C.A.A.F. 2003).

during Article 66 reviews." *Id.* at 442–43 (citing *United States v. Parker*, 36 M.J. 269, 272 (C.M.A. 1993)). The Government, adopting a novel argument, claims A1C Behunin's case falls outside of the *Brennan* category because CM's *sentence* does not appear in the record. (Ans. at 16.) First, this cramped interpretation cannot co-exist with the other cases in the *Brennan* category which do not require such specificity. *See Parker*, 36 M.J. at 272 (reviewing the "growing miscellany of circumstances where extra-record fact determinations were necessary predicates to resolving appellate questions"). A crucial issue in this case is that A1C Behunin *could not* have raised CM's sentence either at trial or in clemency because it had not yet been adjudged.

Second, the Government cannot point to any court that has embraced this restrictive interpretation. In fact, every case that counsel has located reaches the opposite conclusion. (*See* Brief on Behalf of Appellant (App. Br.) at 22–23 n.10.) The Government chooses not to address these cases.

In sum, where the record of trial clearly evidences the co-actor's role, post-docketing sentence comparison falls squarely within the *Brennan* class of precedents.

2. Post-docketing sentence comparison is entitled to stare decisis.

The Government raises a related argument that post-docketing sentence comparison is not entitled to the benefit of stare decisis because no binding precedent exists. (Ans. at 17–18.) To make this argument, it minimizes *United States v. Brock*, where this Court reversed the CCA for denying the appellant's motion to take judicial notice of documents from a comparison case. 46 M.J. 11, 13 (C.A.A.F. 1997).

As a starting point, *Brock* did not limit the issue to judicial notice. This Court only mentioned judicial notice once when reciting the facts of the case. *Id.* at 12. On remand, the lower court made no mention of judicial notice at all. *United States v. Brock*, No. ACM 31301 (f rev), 1997 CCA LEXIS 249 (A.F. Ct. Crim. App., June 27, 1997) (unpublished) (per curiam).[3] Additionally, and similar to the previous section, lower courts have uniformly disagreed with the Government's current position.[4]

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[3] This case is located in the Appendix to the Appellee's Answer.

[4] *See, e.g.*, *United States v. Blow*, No. ACM S32631 (f rev), 2022 CCA LEXIS 495, at *36–37 (A.F. Ct. Crim. App. Aug. 23, 2022) (unpublished) (JA at 208) (citing *Brock* and considering sentences that the appellant attached to the record after docketing); *United States v. Bishop*, No. ACM 32472, 1997 CCA LEXIS 247, at *3–4 (A.F. Ct. Crim. App. June 30, 1997) (unpublished) (Appendix) (citing *Brock* and allowing the appellant to file court-martial orders from three other cases).

Finally, *Brock* is not the only case upon which A1C Behunin relies. In *United States v. Durant*, this Court reviewed a case where the CCA "granted appellant's motion for attachment of an authenticated copy of the record of trial in the [comparison case.]" 55 M.J. 258, 258 (C.A.A.F. 2001). Granted, the appellant in *Durant* had raised the comparison case to the convening authority. *Id.* Still, the post-docketing attachment of the record of trial informs the analysis here. And not only did this Court raise no objection to the procedure, but it continued to fully analyze the attached record of trial when resolving the case. *Id.* at 262.

This Court's decisions on post-docketing sentence comparison are entitled to stare decisis.

3. This Court should not, and need not, consider the Government's blanket attack on sentence comparison.

In its stare decisis analysis, the Government mounts a broadside attack against *United States v. Lacy* that goes far beyond the specified issue. Specifically, it argues that *Lacy* conjured the requirement that CCAs must compare sentences in closely-related cases from whole cloth. (Ans. at 20–22.) The validity of sentence comparison writ large is not the issue in this case, and the Government did not challenge *Lacy* either at the lower court or by cross-appeal. While the Government does not

explicitly ask this Court to overrule *Lacy*, the broad sweep of its argument seems to suggest as much. Adherence to precedent is "preferred," and the Government has presented no "special justification" for departing from this principle. *See United States v. Andrews*, 77 M.J. 393, 399 (C.A.A.F. 2018) (citing *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014)). This Court need not address this issue to resolve the case.

4. The stare decisis factors definitively favor retaining post-docketing sentence comparison.

The stare decisis analysis considers "whether the prior decision is unworkable or poorly reasoned; any intervening events; the reasonable expectations of servicemembers; and the risk of undermining public confidence in the law." *United States v. Blanks*, 77 M.J. 239, 242 (C.A.A.F. 2018). The Government weighs each factor in favor of discarding precedent, but its arguments cannot justify the conclusion.

First, the Government attacks the supposedly poor reasoning of this Court's cases, to include *Lacy* itself. (Ans. at 19–22.) It argues that post-docketing sentence comparison conflicts with Article 66(d), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d). (Ans. at 21–22.) Yet, as this Court recognized in *Jessie*, "'extra-record fact determinations' may

be 'necessary predicates to resolving appellate questions.'" 79 M.J. at 442–43. This Court and the CCAs have considered companion cases raised for the first time after docketing when satisfying Congress' intent that CCAs establish sentence uniformity in the armed forces. *See United States v. Henry*, 42 M.J. 231, 234 (C.A.A.F. 1995) (accepting the basis in legislative history for sentence uniformity as part of Article 66 review). The reasoning of these decisions is not deficient.

Further, in making its argument on Article 66, UCMJ, the Government neglects key principles of stare decisis. Stare decisis is strongest when dealing with statutory interpretation, and this gives rise to the principle that, over time, the established practice will "effectively become part of the statutory scheme." *Blanks*, 77 M.J. at 243 & n.6 (quoting *Kimble*, 135 S. Ct. at 2409).

As to workability, the Government claims that post-docketing sentence comparison is unworkable because CCAs "cannot truly conduct a fair evaluation of two sentences without comparing the entire records of trial from both cases," which would impose a "heavy burden." (Ans. at 23, 24.) This claim is curious given that the CCAs have performed this function for decades without issue. Indeed, this Court, without

complaint, shouldered this "heavy burden" in *Durant* when it reviewed a companion cases' record of trial to determine if there was a rational basis for the sentence disparity. 55 M.J. at 262–63; *see also United States v. Guinn*, 81 M.J. 195, 203–04 (C.A.A.F. 2021) (acknowledging "a CCA's responsibilities under Article 66(c) cannot properly be viewed as being unduly onerous" because for forty years, CCAs have been tasked with evaluating claims made pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982)). This Court has routinely trusted the CCAs to fulfill their responsibilities; this is no different.

This raises another flaw in the Government's argument—the CCAs, in applying *Lacy*, need not review extensive records to answer the first two questions of whether cases are closely-related and whether sentences are highly disparate. The third step, probing whether a rational basis exists for the disparity, is where CCAs *may* need to wade deeper into the

record.[5] But most sentence comparison cases fail on the first two steps.[6] As to demonstrating a rational basis—where the Government bears the burden—it complains that it "might only be able to meet its burden by attaching the entire record of trial from the other case." (Ans. at 23 n.5.) A1C Behunin agrees. While it is certainly true the Government will have to provide evidence to meet its burden under *Lacy*, it is no different than that required of appellants for the first two prongs.

As to intervening events, the Government claims that *Jessie* changes the analysis. (Ans. at 24–25.) For the reasons expressed above, post-docketing sentence comparison remains consistent with *Jessie*. (*Supra* at 1–2.) *Jessie* simply synthesized and crystallized existing precedents.

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[5] CCAs can sometimes resolve this question with only basic information. *See United States v. Marable*, No. ACM 39954, 2021 CCA LEXIS 662, at *3–6, 23–28 (A.F. Ct. Crim. App. December 10, 2021) (unpublished) (JA at 214–15, 221–22) (concluding that a rational basis existed for the disparity using only the statement of trial results from the companion case).

[6] *See, e.g.*, *Lacy*, 50 M.J. at 289 (finding sentences were not highly disparate); *United States v. Daniel*, No. ACM S32654, 2021 CCA LEXIS 365, at *8 (A.F. Ct. Crim. App. July 26, 2021) (unpublished) (JA at 231) (same).

Regarding the reasonable expectations of servicemembers, the Government claims that discarding post-docketing sentence comparison will cause no harm because appellate judges can use their accumulated knowledge to assess sentence appropriateness. (Ans. at 25.) But this analysis has several defects.

First is the inescapable tension between the Government's positions on matters outside the record. Under the Government's view, it is permissible for appellate judges to use their extra-record knowledge of other cases, just not the specific cases that appellant seeks to compare. An example illustrates the problem. Presume a CCA dockets Appellant A's case on January 1, and that Appellant A moves to attach a companion case's entry of judgement (EOJ) for Appellant B's case. Further presume that before the CCA rules on Appellant A's case, it first rules on both Appellant B's case and a similar-but-not-closely-related case of Appellant C on February 1. Under the Government's logic, a CCA judge can consider Appellant C's case for sentence appropriateness review, but cannot consider Appellant B's case for sentence comparison. Would this meet the reasonable expectations of servicemembers? Surely a

servicemember would not believe the vicissitudes of timing would yield such a result.

A second defect is that servicemembers asking for sentence comparison are not seeking an "arithmetically averaged sentence," nor are they asking appellate judges to use their broad experience with unrelated cases as a baseline for determining what certain offenses merit. (Ans. at 26 (citing *United States v. Judd*, 28 C.M.R. 388, 394 (U.S.C.M.A. 1960) (Ferguson, J., concurring in result).) The issue with sentence comparison—and a reason why *Lacy* made it mandatory for closely-related cases—is that highly disparate sentences in closely-related cases are highly unsettling to servicemembers' expectations. No servicemember would expect that, when facing court-martial for essentially the same charges and conduct, two co-actors would receive wildly different sentences. Quite the opposite, the servicemember would expect there to be a mechanism within the military justice system to counterbalance injustice. For this, the Government has no answer.

Finally, on the impact on public confidence, the Government again argues that general sentence appropriateness review is sufficient. (Ans. 26–27.) If this were true, sentence comparison, whether based in the

record or not, would never be required. Perhaps that is what the Government desires, but that is inconsistent with generations of precedent from this Court and its predecessor.

The Government also summarily dismisses concerns about undercutting the foundation for ineffective assistance of counsel (IAC) by claiming that post-docketing sentence comparison falls outside the *Brennan* line of precedents. (Ans. at 27.) For the reasons expressed above, this remains incorrect. (*Supra* at 1–2.)

5. Conclusion

This Honorable Court should retain the important, but limited, ability of servicemembers to bring closely-related cases to a CCAs attention, even if raised for the first time on appeal. This structure has functioned effectively for decades and can continue to do so.

WHEREFORE, A1C Behunin respectfully requests this Honorable Court continue to permit CCAs to consider comparison cases under *Lacy*, even if raised for the first time after docketing.

II.

APPELLANT AND CM FACED SEPARATE COURTS-MARTIAL FOR, *INTER ALIA*, JOINT USE OF CONTROLLED SUBSTANCES. UNLIKE APPELLANT, CM RECEIVED NO CONFINEMENT OR PUNITIVE DISCHARGE FOR ESSENTIALLY THE SAME MISCONDUCT. DID THE AIR FORCE COURT MISAPPLY *UNITED STATES V. LACY*, 50 M.J. 286 (C.A.A.F. 1999) WHEN IT HELD THAT CM'S AND APPELLANT'S CASES WERE NOT CLOSELY-RELATED CASES WHOSE SENTENCES REQUIRED COMPARISON?

1. *A1C Behunin and CM's sentences were closely related within the meaning of* Lacy.

The Government fails to recognize an abuse of discretion in the Air Force Court's holding that CM and A1C Behunin's cases are not closely related. Its rationale: "they were not coactors involved in a common crime for *all* convicted offenses, nor were [they] involved in a common or parallel scheme for *all* convicted offenses, nor does there exist any other direct nexus between the servicemembers for *all* convicted offenses." (Ans. at 30 (emphasis in original).) The Government thus shares the Air Force Court's erroneous view that *Lacy* requires absolute overlap for all offenses (i.e., identical charge sheets). It is this erroneous view of the law that undergirds the Air Force Court's abuse of discretion.

In making this argument, the Government attacks *United States v. Blow*'s conclusion that identical convictions are not required for cases to qualify as closely related. (Ans. at 32 (citing 2022 CCA LEXIS 495).[7]) Specifically, it claims that *Blow* misinterpreted *Brock*, 46 M.J. at 11–13, to reach this conclusion. (Ans. at 32.) This analysis is flawed for several reasons. First, the Government analyzes the Air Force Court's opinion after this Court ordered remand in *Brock*, not *Brock* itself. (Ans. at 32 (citing *United States v. Brock*, 1997 CCA LEXIS 249, at *5).) It is entirely unclear how *Blow* misinterpreted this Court's decision in *Brock* by virtue of what a lower court did on remand.

Second, the facts in *Brock*, including the stipulation of fact that this Court included as an appendix, demonstrate significant differences in the comparison cases. The appellant in *Brock* distributed multiple drugs and engaged in most of his marijuana use without the co-actor from other offenses. 46 M.J. at 14–16. Despite a facial difference in the misconduct, this Court *still* found the CCA erred in disallowing further information about the companion case. *Id.* at 13. If the Government's position were

[7] The Government ignores the other cases A1C Behunin cited that reached the same conclusion. (App. Br. at 32–33 n.11.)

correct, *Brock* would have no reason to remand to admit evidence about the companion case because the stipulation of fact alone demonstrates significant differences in the charges.

The Government next claims that CM and A1C Behunin's cases are not closely related because A1C Behunin failed to provide enough information for sentence comparison. (Ans. at 33.) But the Government, like the Air Force Court, again misunderstand the structure of *Lacy*. A1C Behunin has to show her case is closely related to CM's and that their sentences are highly disparate. This is complete on the basis of the evidence at A1C Behunin's court-martial and CM's EOJ. Still, the Government complains that the CCA does not have information "such as plea agreements, stipulations of fact, and evidence in mitigation and extenuation that the sentencing authority may have considered." (Ans. at 33.) But that evidence relates primarily to the *Government's* burden under *Lacy* to prove a rational basis for the disparity. Evidence in mitigation and extenuation has zero relevance to whether cases are closely related or sentences highly disparate. A1C Behunin met her burden, and thus the Government should have borne its own burden to demonstrate a rational basis for the disparity. It did not.

2. The Government cannot demonstrate a rational basis for the disparity.

The Government argues that it need not demonstrate a rational basis because the sentences at issue—confinement and punitive discharge for A1C Behunin, but none for CM—are not highly disparate. (Ans. at 35–36.) A1C Behunin needs not add more to the previous argument on this point. (App. Br. at 36.)

The Government next claims that even if the sentences are highly disparate, a rational basis explains any disparity. The only argument it can muster is the difference in forum: members versus a military judge. (Ans. at 36–37.) Taking a step back, the result of the Government's argument is troubling. It obliges this Court to embrace the notion that entering a pretrial or plea agreement requiring military judge sentencing—as opposed to a naked guilty plea—provides a rational basis to receive greater punishment. The goal of sentence uniformity and sentence comparison should not allow such gaping disparities simply because of the forum. Moreover, it places an Article 66, UCMJ, consequence for an appellant based on a choice he or she is personally entitled to make under Article 16, UCMJ, 10 U.S.C. § 816, at trial. Congress did not predicate one article upon the other in a flow-chart

scenario. An appellant is entitled to the full benefit, as a component of due process, of the appellate system Congress statutorily created. *See United States v. Rodriguez-Amy*, 19 M.J. 177, 178 (C.M.A. 1985).

The Government's argument relies heavily on Judge Sullivan's concurring opinion in *Durant*. (Ans. at 36–37 ("This optional procedure [election by a court-martial of members] may lead to court-martial sentences in closely related cases which are not the same[.]" (quoting *Durant*, 55 M.J. at 263 (Sullivan, J., concurring) (alterations in Answer).) But the Government reads too much into the concurrence. Judge Sullivan simply stated that the difference in forum may lead to sentences that are not the same, hardly a remarkable statement. And after making this statement, he then proceeded to review the evidence to explain the disparity, a step that would be unnecessary if the forum alone could resolve the issue. *Durant*, 55 M.J. at 263–64 (Sullivan, J., concurring). Given that the Government can offer no other answer to the disparity, it has failed its burden.

3. The Government's prayer to this Court underscores the problem with its Lacy *analysis.*

The Government closes with a troubling request of this Court: even if the Air Force Court misapplied *Lacy*, this Court need only review the

finding that A1C Behunin's sentence was "relatively uniform and appropriate." (Ans. at 37.) In other words, if this Court finds an erroneous application of *Lacy*, it should ignore *Lacy* and review the general appropriateness of the sentence for an abuse of discretion.

As a basis for this prayer, the Government cites *United States v. Wacha,* 55 M.J. 266 (C.A.A.F. 2001), but the Government misreads that case. In *Wacha*, the issue was whether the CCA misinterpreted *Lacy* to *only* allow comparison with closely-related cases. *Id.* at 267. This Court clarified that *Lacy* required comparison in closely-related cases, but left it up to the CCAs discretion for other cases. *Id.* (citing *Lacy*, 50 MJ at 288). In *Wacha*, the lower court had specifically found the comparison cases were *not* closely related. 55 M.J. at 268. In that posture, where *no* sentence comparison was required as a matter of law, this Court found the CCA did not abuse its discretion in approving the sentence. This is fundamentally different than the case here.

Yet from *Wacha*, the Government argues that even if this Court agrees with A1C Behunin that all of the *Lacy* prongs are met, this Court may nonetheless affirm based only on the CCA's conclusion the sentence was relatively uniform and appropriate. Stated differently, if the CCA

was completely wrong and A1C Behunin satisfies the first two *Lacy* prongs, this court may ignore its own burden shifting scheme in *Lacy* and affirm anyway. This Court should decline the Government's suggestion to ignore its precedent.

4. Conclusion

Lacy established a sensible framework that clarifies sentence comparison with courts-martial in closely-related cases. The burden-shifting framework has functioned without needed adjustment for decades. Here, the Air Force Court abused its discretion when it concluded CM and A1C Behunin's cases were not closely related, thus short-circuiting the important structure in *Lacy*. This error warrants relief.

WHEREFORE, A1C Behunin respectfully requests this Honorable Court hold that she has met the *Lacy* test and remand for the Air Force Court to provide appropriate sentencing relief.

Respectfully submitted,

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Appendix

United States v. Bishop

United States Air Force Court of Criminal Appeals

June 30, 1997, Decided

ACM 32472

Reporter
1997 CCA LEXIS 247 *; 1997 WL 392596

UNITED STATES v. Airman First Class RAY T. BISHOP, III, United States Air Force

Prior History: **[*1]** Sentence adjudged 25 October 1996 by GCM convened at Tinker Air Force Base, Oklahoma. Military Judge: Linda S. Murnane (sitting alone). Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Disposition: AFFIRMED.

Counsel: Appellate Counsel for Appellant: Lieutenant Colonel Kim L. Sheffield, Major Ormond R. Fodrea, and Captain Tishlyn E. Taylor.

Appellate Counsel for the United States: Colonel Theodore J. Fink, Lieutenant Colonel Michael J. Breslin, Major LeEllen Coacher, and Major Eric D. Placke.

Judges: Before PEARSON, MORGAN, C. H., II, and MORGAN, J. H., Appellate Military Judges. Senior Judge PEARSON and Judge MORGAN, C. H., II, concur.

Opinion by: MORGAN, J. H.

Opinion

OPINION OF THE COURT

MORGAN, J. H., Judge:

Appellant was convicted in accordance with his pleas of attempting to possess LSD, and using LSD. The military judge sentenced him to a bad-conduct discharge, 8 months confinement, and reduction to E-1. The convening authority reduced the confinement to 6 months but otherwise approved the sentence. Appellant asserts that his sentence was inappropriately severe and urges sentence comparison to certain other drug cases is called for in his case. **[*2]** Finding no merit to appellant's arguments, we affirm.

Appellant was caught in an Air Force Office of Special Investigations (AFOSI) sting operation when he paid for and accepted fake LSD from an AFOSI undercover source. The source was attempting to deliver LSD to appellant's roommate, Airman First Class Cerminara, who was asleep, so appellant decided to accept the delivery rather than wake him up. During a later AFOSI interrogation, appellant admitted he had used LSD once several months earlier.

Appellant incorrectly states in his brief that his approved sentence included 8 months confinement. As the government correctly points out, the convening authority reduced confinement to 6 months, owing, we suspect, to an excellent clemency package submitted by appellant. He urges that his sentence is overly harsh in light of the circumstances surrounding his offense. Although appellant had an outstanding military record and had

demonstrated great potential, we find the approved sentence entirely appropriate for his offenses. *United States v. Snelling, 14 M.J. 267, 268 (C.M.A. 1982)*.

Appellant further contends, as he did in his clemency request to the convening authority, that his **[*3]** case is closely related to three other cases and that his sentence is highly disparate from those cases, requiring sentence comparison. The appropriateness of a sentence should generally be determined without reference or comparison to the sentences of other cases, unless there are highly disparate sentences in closely related cases. *United States v. Olinger, 12 M.J. 458, 460 (C.M.A. 1982)*. Sentence comparison is appropriate only when there is a direct correlation between the offenses and the offenders, disparate sentences actually exist, and there is no good reason for the disparity. *United States v. Snodgrass, 37 M.J. 844, 849 (A.F.C.M.R. 1993)*.

We permitted appellant to file the court-martial orders in three cases so that we could determine if sentence comparison might be appropriate. *United States v. Brock, 46 M.J. 11 (1997)*. Airman First Class Cerminara was convicted of conspiring with appellant and others to possess and use LSD and of attempted possession of LSD. He was sentenced to a bad-conduct discharge, 3 months confinement, forfeiture of all pay and allowances, and reduction to E-1. Airman First Class Brannon was convicted of attempted possession of LSD and **[*4]** received a bad-conduct discharge, forfeiture of $ 200 pay per months for 3 months, 3 months hard labor without confinement, and reduction to E-1. Although both were apparently caught in the same sting operation as appellant, neither was convicted of using LSD as appellant was.

Airman First Class Helgerson was the AFOSI undercover source who conducted the sting and sold the fake LSD to appellant. She was convicted of two counts of using LSD and one count of distributing four dosage units of LSD and received a bad-conduct discharge, 6 months confinement, forfeiture of all pay and allowances, and reduction to E-1. We note that is essentially the same as appellant's approved sentence. Although her offenses were arguably more serious than appellant's, we expect she received favorable consideration for her cooperation in the AFOSI sting.

Sentence comparison is a matter of discretion under military law which permits convening authorities and the service Courts of Criminal Appeals to examine the punishments in other closely related cases within the same jurisdiction. *United States v. Ballard, 20 M.J. 282 (C.M.A. 1985)*; *United States v. Simoy, 46 M.J. 592, 618 (A.F. Ct. Crim. App. **[*5]** 1996)*. Although each of these three cases involves offenses which are somewhat related to appellant's, they did not involve essentially the same misconduct and cannot be considered closely related. *United States v. Thorn, 36 M.J. 955, 960* (A.F.C.M.R.), *pet. denied*, *38 M.J. 226 (C.M.A. 1993)*. Sentence comparison is not appropriate under the facts of appellant's case.

The approved findings of guilty and the sentence are correct in law and fact, and on the basis of the entire record, are

AFFIRMED.

Senior Judge PEARSON and Judge MORGAN, C. H., II, concur.

End of Document

Certificate of Compliance

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I certify that an electronic copy of the foregoing was sent via electronic mail to the Court and served on the Government Appellate Division on January 20, 2023.

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