



JUDICIAL PROCEEDINGS PANEL

Trends and Statistics

Appellate Review of Court-Martial Convictions



JPP Statutory Task

Review and evaluate court-martial convictions for sexual assault in the years covered by the most-recent report required by subsection (c)(2) and *the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement*, if such information is available.
(FY13 NDAA)



Foundational Issues

- 1. How frequently do military appellate courts set aside sexual assault convictions or reduce sentences in such cases?*
- 2. How frequently do military appellate courts set aside sexual assault convictions in cases where the accused pled guilty to the offense?*



Military Appellate Review Process

- Under UCMJ, an accused convicted by court-martial is entitled to automatic review of the trial (UCMJ Articles 65 through 76)
- First step in UCMJ appellate process is review by convening authority
 - Depending on type of case and sentence adjudged, legal review may take place before or after convening authority action on sentence
 - Legal review may consist of either informal review for legal sufficiency or formal, written, post-trial review



Military Appellate Review Process cont'd.

- 3 levels of appellate review to which accused may appeal court-martial conviction:
 - First Level: **Military Service Courts of Criminal Appeals.** *Air Force, Army, Coast Guard, and Navy-Marine Corps CCAs are located in D.C. area and consist of senior judge advocates appointed by Service TJAGs.*
 - Automatic if sentence includes confinement for 1 year or more, punitive discharge, or death (under FY14 NDAA, punitive discharge mandatory for all penetrative sexual assault convictions)
 - CCA's review convictions for both legal and factual sufficiency
 - Second Level: **U.S. Court of Appeals for the Armed Forces.** *Civilian appellate forum in D.C., composed of 5 civilian judges appointed by President*
 - Third Level: Petition to the **U.S. Supreme Court** (subject to statutory limitations)



Appellate Court-Martial Data

- Appellate Court-Martial data was provided by the services. Court opinions are made publically available by each of the military appellate courts on their websites.

Data gathered:

1. Cases that involved a conviction under Article 120 or Article 125
2. Opinion was issued by an appellate court (either published or unpublished) or in the form of a summary disposition



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Opinions Issued Annually by Service Criminal Courts of Appeal in Cases Involving Adult Sexual Assault

	FY 12	FY 13	FY 14	Total
Air Force	15	37	45	97
Army	35	38	41	114
Marine Corps	12	14	28	54
Navy	42	37	20	99
Coast Guard	2	8	6	16
TOTAL	106	134	140	380



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Adult Sexual Assault Cases Set Aside or Reduced at Service Courts of Criminal Appeal

	FY 12	FY 13	FY 14	Total
Air Force	0	3	4	7
Army	3	7	12	22
Marine Corps	2	3	4	9
Navy	1	4	0	5
Coast Guard	0	3	0	3
TOTAL	6	20	20	46

Analysis:

- 46 cases is **12.1%** of 380 cases in FY12 – FY14 where CCAs issued opinions or summary disposition
- Nearly all cases involving relief indicated a charge or specification set aside (only **3** cases where sentence was reduced but convictions not set aside)
- Most common reasons for appellate action:
 - Unreasonable multiplication of charges (**13**)
 - Factual insufficiency (**8**)
 - Other issues: faulty jury instructions, newly discovered evidence, personal jurisdiction over accused, and proper determination of a lesser included offense



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Relief Granted by Service Courts of Criminal Appeals Following a Plea Agreement

	FY 12	FY13	FY14	Total
Air Force	0	0	0	0
Army	0	2	2	4
Marine Corps	0	1	1	2
Navy	0	0	0	0
Coast Guard	0	2	0	2
TOTAL	0	5	3	8

Analysis:

- 8 cases is **2.1%** of 380 cases in FY12 – FY14 where CCAs issued opinions or summary disposition
- Only includes cases where accused pled guilty to adult sexual assault offense (guilty pleas for other types of misconduct not included)
- Reasons for relief:
 - Errors made in initial charging of the case (such as unreasonable multiplication of charges)
 - Errors made in sentencing by counsel of the military judge



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Relief granted by United States Court of Appeals for the Armed Forces (CAAF)

	FY 12	FY13	FY14	Total
Air Force	0	2	2	4
Army	0	1	1	2
Marine Corps	1	1	0	2
Navy	0	0	0	0
Coast Guard	0	1	0	1
TOTAL	1	5	3	9

Analysis:

- In each case, CAAF reversed a finding of a Service CCA relating to an adult sexual assault offense
- Bases for relief granted by CAAF:
 - errors by the military judge in admitting witness testimony (2)
 - multiplicity of charges (1)
 - issues with providency inquiry (1)
 - improper designation of a lesser included offense (1)
 - improper application of a privilege to testimony (1)
 - improper admission of prior misconduct (1)
 - denial of victim testimony (1)
 - improper jury instructions (1)



Questions/Discussion