

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
COOPER, WILLIAMS, and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
Master Sergeant (Retired) WILLIAM A. BRASSFIELD
United States Army, Appellant

ARMY 20250288

Headquarters, U.S. Army Aviation Center of Excellence
Pamela L. Jones, Military Judge
Lieutenant Colonel John C. Olson, Jr., Circuit Special Trial Counsel

For Appellant: Major Peter M. Ellis, JA; Captain Emily R. Ittner, JA (on brief); Colonel Frank E. Kostik, Jr., JA; Lieutenant Colonel Kyle C. Sprague, JA; Major Peter M. Ellis, JA; Captain Emily R. Ittner, JA (on brief in response to specified issue).

For Appellee: Major Elizabeth G. Van Dyck, JA (on brief); Colonel Richard E. Gorini, JA; Major Elizabeth G. Van Dyck, JA; Captain Melissa D. Zigrang, JA (on brief in response to specified issue).

16 September 2026

MEMORANDUM OPINION ON RECONSIDERATION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

WILLIAMS, Judge:

Appellant is entitled to a sentence appropriately tailored to himself and his crimes. The segmented sentence the military judge announced did not deprive appellant of that right, and appellant received a term of confinement commensurate with his crimes. Although we find the military judge erred by announcing a segmented sentence, we find no prejudice and affirm.

On 8 June 2026, this court summarily affirmed the findings and sentence in appellant's case. Appellant subsequently requested we reconsider our decision by raising a new allegation of error pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). On 21 July 2026, this court granted appellant's request for reconsideration and ordered the government to respond. Appellant now contends he

is entitled to sentence relief or a sentence rehearing because the military judge announced a segmented sentence to confinement using post-1 January 2019 sentencing procedures. We disagree.

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of two specifications of rape of a child, in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920 (1956) [UCMJ], and one specification of rape of a child, in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920 (2007). The military judge sentenced appellant to ninety-six months of confinement and reduction to the grade of E-1.

BACKGROUND

Appellant raped three minor girls. Between August 1989 and June 1990, appellant raped his fourteen-year-old stepdaughter by penetrating her vulva with his penis behind a middle school. In 1989, appellant raped his ten-year-old stepdaughter by penetrating her vulva with his penis. Years later, between October 2007 and October 2008, appellant raped a girl when she was five or six by inserting his tongue into her vulva.

After accepting appellant's guilty plea, the military judge announced a segmented sentence to confinement. The military judge sentenced appellant to thirty-six months' confinement for the rape of his fourteen-year-old stepdaughter; thirty-six months' confinement for the rape of his ten-year-old stepdaughter, to be served concurrently. The military judge also sentenced appellant to sixty months' confinement for rape of the five or six-year-old girl, to be served consecutively to the other offenses. The military judge then announced the aggregate result of her sentence to confinement as ninety-six months.¹

Defense counsel did not object when the military judge announced her segmented sentence. However, the military judge *did not ask* defense counsel whether they objected. The military judge asked trial counsel whether "the convening authority and the special trial counsel [could] approve the Court's sentence." Special trial counsel agreed. The military judge next stated, "[a]nd the court did not adjudge a punitive discharge in this case." Special trial counsel responded, "Yes, Your Honor." The military judge then asked defense counsel, "Defense, do you agree?" Appellant's civilian defense counsel replied, "Yes, Your

¹ Because appellant's crimes occurred prior to 1 January 2019, he submitted a pretrial agreement composed of two documents: the agreement itself and a separate document that described the agreed upon limitations on the sentence—commonly known as the quantum. Rule for Courts-Martial [R.C.M.] 910(f)(3) (2008). Appellant's agreed quantum effectively limited his confinement to ninety-six months.

Honor.” The military judge then asked appellant directly, “is that also your understanding,” and appellant stated, “Yes, Your Honor.”

LAW AND DISCUSSION

A. Standard of Review

When trial defense counsel forfeits an objection, this court reviews for plain error. *United States v. Voorhees*, 79 M.J. 5, 9 (C.A.A.F. 2019). Plain error is established when: “(1) there was an error, (2) the error was clear or obvious, and (3) the error caused material prejudice to a substantial right of the accused.” *United States v. Matti*, 86 M.J. 384, 391 (C.A.A.F. 2026). The burden of demonstrating material prejudice rests with the appellant. *Id.*

B. Waiver versus Forfeiture

As a threshold matter, we must determine whether appellant’s failure to object to the segmented sentencing at trial constituted a waiver or a forfeiture. “[W]aiver is the ‘intentional relinquishment or abandonment of a known right,’” *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)), whereas “forfeiture is the failure to make the timely assertion of a right.” *Id.* While a waived issue is completely unreviewable on appeal, a forfeited issue is reviewed for plain error. *Id.* A failure to preserve an error committed during trial forfeits the error on appeal, absent affirmative evidence of waiver. R.C.M. 905(e)(2).

Here, defense counsel did not object, however, the record does not establish affirmative waiver. The record reflects—specific to the announced sentence of the court-martial—the military judge only asked appellant if he understood the sentence did not include a punitive discharge. Arguably, the military judge’s final question of the parties, “[a]re there any other matters to take up before the court adjourns,” solicited affirmative waiver. But, we are not convinced the defense counsel’s response of, “No, Your Honor,” was sufficiently tethered to the sentencing scheme employed to demonstrate an “intentional relinquishment or abandonment of a known right.” *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020). Accordingly, we conclude appellant forfeited his objection to the military judge’s segmented sentence.

C. The Sentencing Error

Both parties agree the military judge erred by applying the post-1 January 2019 segmented sentencing guidelines to appellant’s case. We concur.

The Military Justice Act of 2016 [MJA 2016] eliminated unitary sentencing by military judges and substituted a segmented sentencing model, effective no later than 1 January 2019. National Defense Authorization Act for Fiscal Year 2017 [NDAA FY 2017], Pub. L. 114-328, §§ 5301, 5542, 130 Stat. 2919–20, 2967–68 (2016); Executive Order 13,825, 83 Fed. Reg. 9,889, 9,890, 10,012–13 (March 8, 2018) (including provisions directing segmented sentences by military judges in Annex 2 and making Annex 2 effective 1 January 2019).

A year after enacting MJA 2016, Congress amended the effective date for segmented sentences by military judges. National Defense Authorization Act for Fiscal Year 2018 [NDAA FY 2018], Pub. L. 115-91, § 531(o), 131 Stat. 1387–88, (2017). Congress clarified an accused could request the segmented sentencing rules provided by MJA 2016 if he committed offenses before and after 1 January 2019. *Id.* at § 531(o)(1)(B). Congress further specified, if the accused was tried only for offenses occurring before 1 January 2019, “the relevant sentencing sections shall be applied as if the amendments . . . made by [MJA 2016] . . . had not been enacted.” *Id.* at § 531(o)(1)(A).²

Appellant’s offenses occurred between 1989 and 2008. Accordingly, the unitary sentencing procedure was in effect. *See id.* (clarifying that the MJA 2016 elimination of unitary sentencing by military judges did not apply to offenses occurring before 2019). Thus, the military judge’s announcement of separate, segmented terms of confinement for each specification was error. While the multiple amendments caused by MJA 2016 may have created confusion, it is inescapable that the military judge did not apply the controlling statutory provisions in effect since 12 December 2017. Accordingly, we find the error plain and obvious.

D. Material Prejudice

Finding the error was plain and obvious does not end our inquiry. To obtain relief, the error must have materially prejudiced a substantial right of the appellant. *Matti*, 86 M.J. at 391 (citation omitted). We do not find prejudice in this case.

The military judge’s segmented sentence merely offered insight into her deliberative process in tailoring a sentence appropriate to appellant and the crimes he committed. Her specified breakdown explained her methodical approach in

² The Military Justice Act 2016 further amended Article 56, UCMJ, and directed courts-martial to “impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces” NDAA FY 2017 at § 5301. Prior to this amendment, Article 56, UCMJ, provided “[t]he punishment which a court-martial [could] direct for an offense, [could] not exceed such limits as the President . . . prescribe[d] for that offense.”

addressing the nature of each offense in reaching her aggregate unitary sentence. It reveals how she evaluated the individual specifications under consideration—assigning individual values to the respective offenses—before mathematically reconciling them. This transparency demonstrates that the resulting ninety-six-month aggregate term of confinement was the product of careful deliberation as to an appropriate sentence for appellant’s crimes.

While not binding, this court’s dicta in *United States v. Wilcoxson*, ARMY 20240104, 2026 CCA LEXIS 233 (Army Ct. Crim. App. 12 May 2026) (mem. op.), is persuasive. In *Wilcoxson*, a separate panel of this court, addressed an error where the trial court applied an incorrect sentencing procedure. *Id.*, at *17–19. That panel averred the use of sentencing procedures contrary to the appellant’s prior election did not inherently result in prejudice. *Id.*, at *21. The court in *Wilcoxson* noted the appellant did not “demonstrate[] a reasonable probability that, absent the segmented sentence format, the military judge would have imposed a lesser total period of confinement.” *Id.* Similar to *Wilcoxson*, appellant fails to establish prejudice because he has not shown the military judge’s segmented sentence, rather than a unitary one, had any impact on the length of his sentence. Appellant has presented insufficient information to establish a reasonable probability the military judge would have arrived at a shorter term of confinement had she utilized unitary procedures.

Whether segmented or unitary, the military judge is required to adjudge an appropriate sentence.³ Before the changes directed by MJA 2016, military judges were required to tailor sentences to the offender and his offenses. Accordingly, it was commonly understood, “[e]ach accused deserve[d] individualized consideration on punishment,” *United States v. McNutt*, 62 M.J. 16, 20 (C.A.A.F. 2005), that was “determined on the basis of the nature and seriousness of the offense and the character of the offender.” *Id.* (quoting *United States v. Mamaluy*, 10 U.S.C.M.A. 102, 107, 27 C.M.R. 176, 181 (1959)). An appropriate sentence “assur[es] justice is done and that the accused gets no more than the deserved punishment.” *United States v. Martinez*, 76 M.J. 837, 841 (Army Ct. Crim. App. 2017) (citing *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988)), pet. denied, 77 M.J. 211 (C.A.A.F. 2018). Although, sentence appropriateness review standards are usually reserved to the courts of criminal appeals, the principles that guide such reviews are equally germane to trial judges, lest they announce an inappropriate sentence.

Appellant urges this court to adopt the logic articulated in *Molina-Martinez v. United States*, 578 U.S. 189 (2016). There, the Supreme Court held when a district

³ Unitary sentences are not inherently more likely to result in greater punishment. Indeed, an accused charged with crimes that occurred before and after 1 January 2019 and tried by members may elect military judge alone segmented sentencing or unitary sentencing by members. NDAA FY 2018 at § 531(o)(1)(B).

court starts with an incorrect, and higher federal sentencing guidelines range, “the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.” *Id.* at 198. This principle was reinforced in *Rosales-Mireles v. United States*, which noted application of an incorrect guideline range warrants correction under plain error. 585 U.S. 129, 132 (2018). Appellant argues by analogy that because the military judge began with the wrong sentencing framework, the decision-making process was distorted and created a presumption of prejudice.

We find the federal guideline analogy unpersuasive in this context. Under the federal sentencing guidelines, an incorrect calculation shifts the advisory baseline range upward or downward, directly changing the judge’s starting point from which to calculate a term of confinement. *See id.* at 135 (noting how an erroneous accounting of a past conviction resulted in the accused receiving an elevated sub-category score, translating into a higher suggested guideline range). Here the military judge correctly understood the range of punishments she could adjudge, from no punishment up to and including a dishonorable discharge, life without eligibility for parole, total forfeitures of pay and allowances, and a reduction to E-1. The military judge did not apply an incorrect range or begin her calculation from an erroneously inflated starting point. Rather, the military judge used an incorrect procedure to announce the term of confinement. Accordingly, because the error was procedural and did not alter the applicable range of punishment, appellant’s reliance on the federal sentencing guidelines analogy does not fit the circumstances of this case.

Appellant has failed to show a reasonable probability that the military judge would have imposed a lesser total term of confinement had she announced a unitary sentence. Appellant was convicted of raping three children. Appellant’s predation of children spanned nearly twenty years. The maximum term of confinement for his offenses, as referred, was life without the eligibility for parole. The final aggregate sentence of ninety-six months of confinement and a reduction to E-1 is consistent with the gravity of the offenses and the terms of his pretrial agreement.

Nothing in the record suggests the segmented sentence inflated the military judge’s assessment of the appropriate total punishment. Because the aggregate confinement term of ninety-six months remains within the bounds of both the maximum authorized punishment and the pretrial agreement—that appellant negotiated with the referral authority—appellant has failed to meet his burden of proving material prejudice under Article 59(a), UCMJ.

CONCLUSION

On reconsideration of the entire record, including the matters personally raised by appellant under *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the findings of guilty and a unitary sentence of ninety-six months of confinement and reduction to the grade of E-1 are AFFIRMED.

Senior Judge COOPER and Judge SCHLACK concur.

FOR THE COURT:



JAMES W. HERRING, JR.
Clerk of Court