

UNITED STATES COURT OF MILITARY APPEALS

United States v. Grady

15 M.J. 275 (1983) · Decided April 25, 1983

SUMMARY

The court held that repeated references during sentencing to Strategic Air Command drug policies improperly influenced the members and that the military judge had a sua sponte duty to interrupt the argument and provide limiting instructions. Because the military judge failed to do so and the accused was prejudiced, the court reversed the lower court’s decision as to sentence and set aside the sentence, authorizing a rehearing.

CASE DETAILS

COURT	United States Court of Military Appeals
WRITING FOR THE COURT	Cook; Everett; Fletcher
JURISDICTION	USA
DECIDED	April 25, 1983
DISPOSITION	reversed
PROCEDURAL POSTURE	The accused petitioned the United States Court of Military Appeals for review after a special court-martial conviction and sentence were affirmed by the convening and supervisory authorities and by the Court of Military Review.
STANDARD OF REVIEW	The court reviewed whether the military judge had a sua sponte duty to restrict counsel's argument concerning command policy and whether the judge's failure to do so caused prejudicial error under Article 59(a), UCMJ.
PRECEDENTIAL VALUE	Published precedential opinion of the United States Court of Military Appeals
PARTIES	Grady v. United States

TOPICS

- court martial
- military law
- sentencing
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a military judge has a sua sponte duty to restrict counsel's argument before sentencing members when counsel refer to command policy.
2. Whether the military judge's failure to interrupt repeated references to SAC drug policy and give appropriate limiting instructions constituted prejudicial error requiring the sentence to be set aside.

HOLDINGS

1. A military judge has a sua sponte duty to interrupt and restrict counsel's references to departmental or command policies before sentencing members and to provide appropriate limiting instructions.
2. The repeated references to SAC command policy, combined with the military judge's failure to interrupt and give timely limiting instructions, were prejudicial error; the sentence therefore had to be set aside.

KEY QUOTATIONS

"The concluding advice as to the members' responsibilities to independently determine an appropriate sentence was too little and too late." (276)

"What is improper is the reference to such policies before members in a manner which in effect brings the commander into the deliberation room." (276)

"Hence, whether it was trial counsel or defense counsel who first broached the subject of command policy, the mention of such policy before the members improperly invades the province of their sentencing deliberations." (277)

FACTUAL BACKGROUND

During sentencing, both trial and defense counsel repeatedly referred to Strategic Air Command drug policies and asserted that those policies affected the severity of the accused's sentence. Trial counsel suggested that the members were bound to adhere to SAC policies and that rehabilitation was unavailable for persons convicted of transferring marijuana. The military judge did not interrupt the arguments or give contemporaneous limiting instructions, and his later instruction that the members independently determine the sentence was deemed inadequate.

PROCEDURAL HISTORY

Grady pleaded guilty and was convicted by a special court-martial of transferring and using marijuana in violation of Article 134, UCMJ. He received a bad-conduct discharge, three months' confinement, forfeitures, and reduction in grade. The convening and supervisory authorities approved the sentence, and the Court of Military Review affirmed. The Court of Military Appeals granted review, reversed as to the sentence, and set the sentence aside, permitting a rehearing.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The decision of the United States Air Force Court of Military Review was reversed as to the sentence, and the sentence was set aside. The record of trial was returned to the Judge Advocate General of the Air Force, and a rehearing could be ordered.

CASES CITED

- United States v. Rivas, 3 M.J. 282, 286 (C.M.A. 1977)
- United States v. Estrada, 7 U.S.C.M.A. 635, 638, 23 C.M.R. 99, 102 (1957)
- United States v. Fowle, 7 U.S.C.M.A. 349, 352, 22 C.M.R. 139, 142 (1956)
- United States v. Silva, 8 U.S.C.M.A. 105, 23 C.M.R. 329 (1957)
- United States v. Davis, 8 U.S.C.M.A. 425, 24 C.M.R. 235 (1957)
- United States v. Hawthorne, 7 U.S.C.M.A. 293, 297, 22 C.M.R. 83, 87 (1956)
- United States v. Stringer, 5 U.S.C.M.A. 122, 17 C.M.R. 122
- United States v. Graves, 1 M.J. 50, 53 (C.M.A. 1975)