UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ALEX BAKCSI
United States Air Force

ACM S30923 (f rev)

26 July 2007

Sentence adjudged 12 May 2005 by SPCM convened at Travis Air Force Base, California. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Lieutenant Colonel Michael E. Savage.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

OPINION OF THE COURT
UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court for further review because the original action was set aside. *United States v. Bakcsi*, 64 M.J. 544 (A.F. Ct. Crim. App. 2006). This Court returned the case to The Judge Advocate General for remand to the convening authority for a new action upon consideration of the clemency matters previously submitted by the appellant and his trial defense counsel. On 4 April 2007, the convening authority completed a new action in compliance with our holding. In his sole remaining assignment of error, the appellant alleges that his sentence, consisting of a bad-conduct

discharge, confinement for 6 months, and reduction to the grade of E-1, is inappropriately severe.[1]

We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Healy*, 26 M.J. 394 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

We have reviewed the record of trial, the error assigned by the appellant and the government's reply thereto. In determining the appropriateness of a sentence, this Court exercises its "highly discretionary" powers to assure that justice is done and the appellant receives the punishment he deserves. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). Performing this function does not authorize this Court to engage in the exercise of clemency. *Healy* at 395-96. The primary manner in which we discharge this responsibility is to give "individualized consideration" to an appellant "on the basis of the nature and seriousness of the offense and the character of the offender." *Snelling* at 268 (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). After a careful review of the appellant's case, we hold that the appellant's sentence is not inappropriately severe.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator

[1] This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).