UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic EDWARD A. BARKLEY II
United States Air Force

ACM S30142

5 April 2004

Sentence adjudged 1 May 2002 by SPCM convened at Tyndall Air Force Base, Florida. Military Judge: Ann D. Shane.

Approved sentence: Bad-conduct discharge and confinement for 60 days.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Captain C. Taylor Smith.

Before

PRATT, MALLOY, and GRANT
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of errors and the government's reply thereto. First, the appellant argues on appeal that the military judge erred when he ruled that the restriction placed on the appellant did not amount to confinement. An accused is entitled to day-for-day credit against confinement for time spent in pretrial restriction where the conditions are tantamount or equivalent to confinement. *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985) (summary disposition). We review de novo the question of whether the pretrial restrictions were tantamount or equivalent to confinement. *United States v. King*, 58 M.J. 110 (C.A.A.F. 2003). In this regard, we consider the nature and scope of any pretrial restraint, the accused's required duties, and other conditions imposed upon the service member. *United States v. Smith*, 20 M.J. 528, 531-32 (A.C.M.R. 1985).

We hold that the appellant's restriction was not tantamount or equivalent to confinement. The appellant had been hospitalized three separate times for expressing suicidal ideation. Both the mental health providers and the squadron were concerned for his safety. The conditions of his restraint were supportive of those safety concerns. He was restricted to the installation but was not physically restrained. He was evaluated on a daily basis by the Life Skills Support Center before going to his duty section for his daily duties. He was allowed to travel on and off base but was required for part of the time to travel with an escort and be transported. He was transported out of concern for a prior physical injury he had sustained. The military judge's determination "the accused has been under administrative restraint in accordance with [Rule for Courts-Martial] RCM 304(h)" was not error.

Additionally, we have reviewed the appellant's two alleged errors raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and find them to be without merit. Accordingly, the approved findings and sentence are correct in law and fact, the sentence is appropriate, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator