UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ROBERT M. BELCHER
United States Air Force

ACM 37557

31 January 2011

Sentence adjudged 11 August 2009 by GCM convened at Seymour Johnson Force Base, North Carolina. Military Judge: Katherine E. Oler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford, Major Shannon A. Bennett, Major Darrin K. Johns, Major Reggie D. Yager, and Major Bryan A. Bonner.

Appellate Counsel for the United States: Lieutenant Colonel Jeremy S. Weber, Captain Joseph Kubler, and Gerald R. Bruce, Esquire.

Before

BRAND, GREGORY, and ROAN
Appellate Military Judges

PER CURIAM:

A general court-martial composed of a military judge sitting alone convicted the appellant in accordance with his pleas of one specification of attempted possession of ecstasy with intent to distribute, one specification each of divers wrongful use of Percocet, cocaine, and Lortab, one specification of distribution of Percocet, one specification of possession of Percocet, and one specification of theft of Hydrocodone in violation of Articles 80, 112a, and 121, UCMJ, 10 U.S.C. §§ 880, 912a, 921. The court sentenced him to a bad-conduct discharge, confinement for 18 months, total forfeitures, and reduction to the grade of E-1. The convening authority approved the sentence

adjudged. The appellant argues that his sentence is inappropriately severe particularly when compared to the sentences of two of his drug abusing colleagues, Airman Knueppel and Airman Morvan. We disagree.

The appellant's illegal drug activity stopped when he attempted to buy ecstasy pills from a law enforcement informant. During the plea inquiry he admitted that he intended to distribute the ecstasy pills to two other Airmen, Airman Knueppel and Airman Morvan. He also admitted to using Percocet, Lortab, and cocaine on "multiple occasions" as well as to possessing and selling Percocet to other Airmen, which he received from his uncle. To illegally obtain more prescription medication, he and Airman Knueppel stole Hydrocodone pills from another Airman's dormitory room by using a bay orderly key held by Airman Knueppel.

According to documents submitted by the appellant, Airman Morvan pled guilty before a general court-martial to similar possession, use, and distribution offenses and received a bad-conduct discharge, 12 months of confinement, and reduction to E-1. Airman Knueppel pled guilty before a special court-martial to similar possession and use offenses in addition to theft of Hydrocodone with his co-actor, the appellant, and received a bad-conduct discharge, 9 months of confinement, forfeitures, and reduction to E-1. Based on these results, the appellant argues that his sentence should be reassessed to include no more than 12 months of confinement.

Sentence Appropriateness

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

Sentence comparison is required only in closely related cases. *United States v. Christian*, 63 M.J. 714, 717 (A.F. Ct. Crim. App. 2006) (citing *United States v. Wacha*, 55 M.J. 266, 267-68 (C.A.A.F. 2001)), *aff'd*, 66 M.J. 291 (C.A.A.F. 2008). Closely related cases include, for example, those which pertain to "coactors involved in a common crime, servicemembers involved in a common or parallel scheme, or some other direct nexus between the servicemembers whose sentences are sought to be compared." *Lacy*, 50 M.J. at 288. "At [this Court], an appellant bears the burden of demonstrating that any cited cases are 'closely related' to his or her case and that the sentences are

'*highly disparate*.' If the appellant meets that burden . . . then the Government must show that there is a rational basis for the disparity." *Id*. (emphasis added).

The cases cited by the appellant for comparison do not support reduction of his sentence. First, the cases are not sufficiently closely related since, of the three cases, only the appellant faced charges of both distribution *and* theft. Second, even if the two general court-martial cases for distribution were considered closely related, the appellant has not shown that the sentences are highly disparate. To determine whether these particular sentences are highly disparate, we compare not only the raw numerical values of the sentences in the closely related cases but also consider any disparity in relation to the potential maximum. *Id*. at 289. Here, as in *Lacy*, a difference of a few months between these sentences is not highly disparate. Both the appellant and Airman Morvan faced a general court-martial for distribution which carries a maximum of 15 years. Considering this potential maximum as well as the appellant's additional charge of theft, a difference of six months in the term of confinement is not highly disparate.

We next consider whether the appellant's sentence was appropriate judged by "individualized consideration" of the appellant "on the basis of the nature and seriousness of the offense[s] and the character of the offender." *Snelling*, 14 M.J. at 268 (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). After carefully examining the submissions of counsel, the appellant's military record, and all the facts and circumstances surrounding the offenses of which he was found guilty, we do not find that the appellant's approved sentence is inappropriately severe for such varied and extensive crimes involving controlled substances along with a demonstrated willingness to facilitate such crimes for other Airmen.

Conclusion

The approved findings and the sentence are correct in law and fact 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 the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court