UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

First Lieutenant ROBERT G. BOEHME
United States Air Force

ACM 37281

09 June 2009

Sentence adjudged 19 June 2008 by GCM convened at Travis Air Force Base, California. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Dismissal, restriction for 30 days, and a reprimand.

Appellate Counsel for the Appellant: Captain Jennifer J. Raab.

Appellate Counsel for the United States: Major Jeremy S. Weber, Captain Coretta E. Gray, and Gerald R. Bruce, Esquire.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

PER CURIAM:

In accordance with the appellant's pleas, a military judge sitting as a general court-martial convicted him of two specifications of violating a lawful general regulation, one specification of engaging in conduct unbecoming an officer and a gentleman, and one specification of committing an indecent act with another, in violation of Articles 92, 133, and 134, UCMJ, 10 U.S.C. §§ 892, 933, 934. The adjudged and approved sentence consists of a dismissal, 30 days restriction, and a reprimand.[1] On appeal the appellant asks this Court to set aside his dismissal. The basis for his request is that he opines his

[1] The appellant and the convening authority signed a pretrial agreement wherein the appellant agreed to plead guilty to the charges and specifications in return for the convening authority's promise to mitigate confinement in excess of 30 days to restrictions.

sentence to a dismissal is inappropriately severe.[2] We disagree. Finding no prejudicial error, we affirm.

Background

During the late evening hours of 1 July 2006 or the early morning hours of 2 July 2006, the appellant, while in a San Francisco hotel room, engaged in oral sex with Senior Airman (SrA) CP, someone he knew to be an enlisted member from his squadron, in the presence of others. In late January 2007, the appellant had sexual relations with yet another enlisted member. He had sexual intercourse with SrA AT on three occasions in his off-base apartment. Despite the fact that SrA AT worked in his building, the appellant claimed he did not to know of SrA AT's enlisted status the first and second time they had sexual intercourse. However, on the third occasion he knew SrA AT was enlisted and still chose to have sexual intercourse with her. On 29 November 2007, after charges were preferred against him, the appellant learned that SrA CP had made a statement to investigators regarding their past sexual relations. The appellant called SrA CP and asked her to lie to investigators about their past sexual relations.

Inappropriately Severe Sentence

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 offense, 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).

In the case at hand, the appellant, by asking SrA CP to lie on his behalf, has dishonored and disgraced himself as an officer. Moreover, his indecent act and his willful disobedience with two enlisted members seriously compromise his standing as an officer and military member. After carefully examining the submissions of counsel, the appellant's otherwise exemplary military record, and taking into account all the facts and circumstances surrounding the offenses of which the appellant was found guilty, we do not find the appellant's sentence to a dismissal inappropriately severe.

[2] This issue is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Conclusion

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, 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

STEVEN LUCAS, YA-02, DAF
Clerk of the Court