UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic TERRY J. BOUTWELL
United States Air Force

ACM 35741

22 November 2005

Sentence adjudged 4 September 2003 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: James L. Flanary (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 3 years, and forfeiture of all pay and allowances.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, and Major L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Alisa W. James, Lieutenant Colonel Gary F. Spencer, and Lieutenant Colonel Robert V. Combs.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of conspiracy to commit larceny, use of marijuana on divers occasions, distribution of marijuana on divers occasions, larceny of property, and unlawful entry, in violation of Articles 81, 112a, 121, and 130, UCMJ, 10 U.S.C. §§ 881, 912a, 921, 930. Contrary to his pleas, the appellant was found guilty of using cocaine on divers occasions and larceny of a dormitory master key[1] in violation of Articles 112a and 121, UCMJ. The military judge, sitting alone as a general court-martial, sentenced the appellant to a dishonorable discharge, confinement for 3 years, and forfeiture of all pay and allowances. The convening authority approved the findings and sentence as adjudged.

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[1] The appellant pled guilty to the lesser-included offense of wrongful appropriation of the master key, but after presentation of evidence the military judge found him guilty of the greater offense of larceny.

The appellant asks that we find his sentence inappropriately severe. This Court has the authority to review sentences pursuant to Article 66(c), UCMJ, 10 U.S.C. § 866(c), and to reduce or modify sentences we find inappropriately severe. Generally, we make this determination in light of the character of the offender and the seriousness of his offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise of clemency. *See United States v. Lacy*, 50 M.J. 286, 287; *United States v. Healy*, 26 M.J. 394, 396 (C.M.A. 1988).

The appellant was involved in serious crimes both on and off base. When his commander imposed extra duties upon him in a nonjudicial punishment action, he took advantage of those duties in order to enable his future crimes. First, he stole the master key to the Security Forces' dormitory by surreptitiously sweeping it into his dustpan while cleaning near the law enforcement desk. Later, when assigned to paint unoccupied rooms in the dorm, he used the opportunity to "case" adjoining rooms for items of possible value. He then used information posted in his squadron orderly room to determine when the occupants of those rooms would be away on temporary duty for deployment training. While the occupants were away the appellant and his co-conspirator used the master key to enter the rooms of their squadron mates and steal specific items. Significantly, this night of thievery took place the evening before the appellant was scheduled to enter corrective custody as punishment meted out for a second nonjudicial punishment action.

The prosecution presented evidence in aggravation demonstrating that the appellant's larceny crimes had deleterious effects on squadron morale, potentially endangered dorm residents, and forced the government to spend over $25,000 on new locks for all base dormitories. The prosecution exhibits in aggravation included three nonjudicial punishment actions, one vacation of nonjudicial punishment, five letters of reprimand, and a letter of counseling.

Additionally, the appellant's involvement with drugs was extensive, and included sales of marijuana to military members and civilians. Besides the stipulation of fact and the appellant's providence inquiry, two airmen testified regarding the appellant's repeated use of marijuana and cocaine and his involvement in distributing marijuana. An agent from the Air Force Office of Special Investigations testified that the appellant admitted distributing marijuana to civilians in Clovis, New Mexico, between 10 and 14 times after purchasing the drug from a known cocaine and marijuana dealer. The agent also testified that the appellant admitted to selling marijuana to fellow security forces members 30 to 35 times while at technical training at Keesler Air Force Base, Mississippi, between November 2001 and March 2002. These sales were outside the charged timeframe, but the military judge properly admitted the evidence during the findings phase of the trial, and therefore could have considered the information when

determining the appellant's sentence. *See* Rule for Courts-Martial (R.C.M.) 1002(f)(2)(A).

Taking into account all the facts and circumstances, we do not find the appellant's sentence inappropriately severe. *See Snelling*, 14 M.J. at 268. To the contrary, after reviewing the entire record, we find that the sentence is appropriate for this offender and his offenses. *See United States v. Baier,* 60 M.J. 382, 383 (C.A.A.F. 2005); *Healy,* 26 M.J. at 395.

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

ANGELA M. BRICE
Clerk of Court