UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant SCOTT M. BOWER
United States Air Force

ACM S31188

31 August 2007

Sentence adjudged 15 August 2006 by SPCM convened at Edwards Air Force Base, California. Military Judge: Ronald A. Gregory.

Approved sentence: Bad-conduct discharge, confinement for 2 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Daniel J. Breen.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

PER CURIAM:

In accordance with his plea, the appellant was convicted of one specification of wrongful use of methamphetamine on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The approved sentence consists of a bad-conduct discharge, confinement for 2 months, and reduction to E-1.

The appellant asserts that the convening authority erred when he approved a sentence which included a bad-conduct discharge and reduction in grade when he had previously agreed, through a pretrial agreement (PTA), that the "approved sentence shall not exceed two (2) months confinement" and no other agreement or understanding between the parties was enforceable under Rule for Courts-Martial 705(d)(2).

Interpretations of pretrial agreements are questions of law which are reviewed de novo. *United States v. Lundy*, 63 M.J. 299, 301 (C.A.A.F. 2006); *United States v. Acevedo*, 50 M.J. 169 (C.A.A.F. 1999). Further the court looks to the appellant's understanding of the agreement as reflected in the record as a whole. *Lundy*, 63 M.J. at 301.

Appendix A to the PTA was silent on other forms of punishment and the limitations thereon. The trial judge explored the understandings of the parties on the record. He specifically questioned trial counsel and trial defense counsel about the missing language, and both indicated they understood there to be no other limitations on the types of punishments that could be approved. After announcement of the sentence, the trial judge again explored the issue and the appellant indicated that he understood the convening authority could approve the punishment adjudged. In a very similar unpublished case, *United States v. Foster*, ACM 32197 (A.F. Ct. Crim. App. 12 Mar 1997) (unpub. op.), the trial judge did much less and the sentence was affirmed.

Although the appellant and his counsel were served the staff judge advocate recommendation and the addendum, they did not address this potential issue during clemency and it is only on appeal that the appellant claims the terms of the agreement prevent approval of the adjudged sentence. After a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the convening authority did not err when he approved the sentence as adjudged.

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; *United States v Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of Court