UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman MICHAEL T. BROWN
United States Air Force

ACM 38158

11 October 2013

Sentence adjudged 9 February 2012 by GCM convened at Minot Air Force Base, North Dakota. Military Judge: Scott E. Harding.

Approved Sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Matthew T. King.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Jason M. Kellhofer; and Gerald R. Bruce, Esquire.

Before

ORR, HARNEY, and MITCHELL
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

PER CURIAM:

The appellant was convicted, consistent with his pleas, at a general court-martial comprised of officer and enlisted members, of one specification of wrongful possession of marijuana and one specification of wrongful possession of drug paraphernalia in violation of Articles 112a and 134, UCMJ, 10 U.S.C. §§ 912a, 934. The panel members found the appellant not guilty of two specifications of assault. The adjudged and approved sentence consisted of a bad-conduct discharge, confinement for 3 months, and reduction to the grade of E-1.

The appellant asserts that his sentence is inappropriately severe. This Court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the 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). We have a great deal of discretion in determining whether a particular sentence is appropriate but are not authorized to engage in exercises of clemency. *United States v. Nerad*, 69 M.J. 142, 146 (C.A.A.F. 2010); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

The appellant argues his sentence is too severe when considering the relatively small amount of marijuana he possessed (4.493 grams), the lack of any "disorder" associated with the drug, and even the latent discovery of the homemade pipe during a "safety sweep." The appellant also argues that his charges should have more appropriately been brought by his commander in a nonjudicial punishment forum.[1] We disagree and affirm the findings and sentence.

During the *Care*[2] inquiry, the appellant admitted possessing marijuana and drug paraphernalia, including a homemade pipe, knowing those actions violated the UCMJ. He further admitted that he possessed the pipe well before he received the marijuana and his intent in possessing the pipe was to use it to smoke the marijuana in the future. At the time of offense, the appellant had been in the Air Force for approximately two years and six months.

After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offenses for which he was found guilty, we do not find the appellant's sentence inappropriately severe. The appellant was sentenced to confinement for 3 months, which was well below the maximum sentence allowed of confinement for 28 months. Concerning the commander's choice of forum, that is a matter of command prerogative and the choice was appropriate under the circumstances. In our view, the appellant's actions are a clear departure from the expected standards of conduct in the military and his sentence was appropriate. We find that the approved sentence was clearly within the discretion of the convening authority and was appropriate in this case.

[1] See Article 15, UCMJ, 10 U.S.C. § 815.
[2] *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

The approved findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the approved findings and sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court