

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class EDWIN J. BUDD III
United States Air Force**

ACM S31070

12 December 2006

Sentence adjudged 14 February 2006 by SPCM convened at Little Rock Air Force Base, Arkansas. Military Judge: Joseph E. Cole (sitting alone).

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

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Captain Timothy M. Cox, and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Major Kimani R. Eason.

Before

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM:

We have reviewed the record of trial, the error assigned by the appellant pursuant to *United States v. Grostefon*^{*}, and the government's reply thereto. In determining the appropriateness of a sentence, this Court exercises its "highly discretionary" powers to assure that justice is done and the appellant receives the punishment he deserves. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). Performing this function does not authorize this Court to engage in the exercise of clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this responsibility is to give "individualized consideration" to an appellant "on the basis of the nature and

^{*} 12 M.J. 431 (C.M.A. 1982)

seriousness of the offense and the character of the offender.” *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). After a careful review of the appellant’s case, we hold that the appellant’s sentence is not inappropriately severe.

We note that the staff judge advocate (SJA) erred during post-trial processing by failing to remind the convening authority, in the staff judge advocate’s recommendation (SJAR), that he entered into a pretrial agreement (PTA) with the appellant, and by failing to include a statement in the SJAR concerning what action, if any, the convening authority was required to take in regard to the PTA. Rule for Courts-Martial (R.C.M.) 1106(d)(3)(E) requires the SJA to include information regarding any pretrial agreement in the SJAR. The appellant notes this omission in his assignment of error, but asserts no prejudice. The PTA provided that the convening authority would approve no confinement greater than four months. Only three months of confinement was adjudged. Therefore, no action was necessary on the part of the convening authority in regard to the PTA. While we again caution SJAs to carefully comply with the Rules for Courts-Martial during post-trial processing, under the facts of this particular case we agree with the appellant that he suffered no prejudice as a result of the omission in the SJAR. *See* R.C.M. 1106(f)(6); *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000); *United States v. Wheelus*, 49 M.J. 283, 289 (C.A.A.F. 1998).

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 findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator