UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class STEVEN L. CHEN
United States Air Force

ACM 36801

13 November 2007

Sentence adjudged 27 June 2006 by GCM convened at Holloman Air Force Base, New Mexico. Military Judge: Bryan D. Watson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Anthony D. Ortiz.

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

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of one specification of wrongful use of methamphetamine on divers occasions and one specification of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The military judge, sitting alone as a general court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 4 months, and reduction to E-1. The convening authority approved the findings and sentence as adjudged. On appeal, the appellant raises one error alleging ineffective assistance of counsel pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

In order for an individual to claim ineffective assistance of counsel, an appellant must overcome a strong presumption that defense counsel has "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). The appellant must prove that counsel's performance was deficient and this deficiency prejudiced the appellant. *Id.* at 687. The appellant in the case sub judice has not offered any evidence in his post-trial declaration or in any other form that overcomes the presumption that his counsel acted reasonably and rendered adequate assistance. The appellant avers in his post-trial affidavit that his trial defense counsel gave him only two days to complete his clemency submission, so he did not have time to get letters of recommendations from relations. We find the appellant's *Grostefon* claim to be without merit.

A thorough review of the record reveals the appellant acknowledged in writing his post-trial rights, which explained the clemency process and timing, on 26 June 2006. The appellant's court-martial was held on 27 June 2006. On that day the appellant again signed a letter which outlined his rights to submit matters to the convening authority before the convening authority took action on his case. The appellant was served the Staff Judge Advocate's Recommendation on 20 July 2006. Trial defense counsel submitted the appellant's clemency package on 27 July 2006, three days before it was due. There is no indication in the record that the appellant asked for more time to submit matters, even though all three memoranda acknowledged by the appellant provided him this opportunity. We find based on these facts that the appellant had plenty of notice as to his right to submit clemency and the process, as the record reflects three occasions on which he signed acknowledging such. The first written notice regarding clemency was at least one month before the appellant's clemency package was submitted. The appellant's claim of having only two days to put his clemency package together is not supported by the record.

The appellant's submission consisted of a memorandum from his trial defense counsel, the appellant's clemency request and his unsworn statement submitted at trial, an excerpt of his section chief's trial testimony, six character letters, two congratulatory letters, one superior performance award, his technical school training report, a letter of evaluation, an enlisted performance report, and four pages of photographs. The character letters included one each from his father, mother, sister, two co-workers, and a long-time friend.[1] The strength of the appellant's clemency package supports this Court's conclusion that the counsel's assistance was adequate and not ineffective.

Further, while the appellant says, in his affidavit, if he had had more time he would have contacted family and friends to ask them to write letters on his behalf and spent more time on his own letter, he does not indicate what new information would have

[1] All but one of these were defense sentencing exhibits. The character letter from the appellant's section chief was added to the clemency package after having been ruled cumulative to the section chief's testimony and not permitted as a sentencing exhibit.

been provided to the convening authority. Thus we find no prejudice to the appellant as the convening authority received and considered six letters of support on the appellant's behalf, in addition to the appellant's written request for clemency. The appellant has failed to establish that he received ineffective assistance of counsel under either prong of the *Strickland* test.

Conclusion

The 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

STEVEN LUCAS, GS-11, DAF
Clerk of the Court