UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Second Lieutenant LEWIS CHOI
United States Air Force

ACM 37577

15 September 2010

Sentence adjudged 06 October 2009 by GCM convened at Seymour-Johnson Air Force Base, North Carolina. Military Judge: Le T. Zimmerman (sitting alone).

Approved sentence: Dismissal, confinement for 4 months, and a reprimand.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz and Captain Andrew J. Unsicker.

Appellate Counsel for the United States: Colonel Don M. Christensen, Major Kimani R. Eason, and Gerald R. Bruce, Esquire.

Before

BRAND, JACKSON, and GREGORY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Pursuant to the appellant's pleas, a military judge sitting as a general court-martial convicted the appellant of one specification of attempted wrongful possession of cocaine, one specification of divers wrongful use of cocaine, one specification of wrongful possession of marijuana, and one specification of divers wrongful use of marijuana in violation of Articles 80 and 112a, UCMJ, 10 U.S.C. §§ 880, 912a. The adjudged and approved sentence consists of a dismissal, four months of confinement, and a reprimand.[1]

[1] The appellant and the convening authority entered into a pretrial agreement wherein, inter alia, the appellant agreed to plead guilty to the charges and specifications in return for the convening authority's promise not to approve confinement in excess of 18 months.

On appeal, the appellant argues that his sentence to a dismissal is inappropriately severe.[2] We disagree. Finding no prejudicial error, we affirm the findings and the sentence.

Background

On 11 December 2008, the appellant drove a fellow officer to a local gas station, where an unknown individual asked the appellant if he wanted to purchase some drugs. The appellant agreed to purchase some cocaine and after receiving what he believed was cocaine, an undercover narcotics investigator and agents with the Air Force Office of Special Investigations (AFOSI) arrested him and the fellow officer.[3] AFOSI agents escorted the appellant to their office, where, after a proper rights advisement, the appellant waived his rights and confessed to attempting to purchase cocaine, to using cocaine on approximately nine previous occasions, and to using marijuana on three previous occasions. The appellant also consented to a search of his hair and urine, his off-base residence, and his on-base workstation. The appellant provided a urine sample, his sample was sent to the Air Force Drug Testing Laboratory, and it subsequently tested positive for tetrahydrocannabinol (THC), a marijuana metabolite, at 254 nanograms per milliliter (ng/mL) of urine. The Department of Defense (DoD) cutoff for THC is 15 ng/mL. AFOSI agents seized drug paraphernalia and approximately 10.97 grams of marijuana from the appellant's residence. At trial, the military judge conducted a thorough *Care*[4] inquiry. The appellant's pleas are provident.

Discussion

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire 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). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

The appellant severely compromised his standing as an officer and a military member. Moreover, the appellant's crimes are aggravated by the fact that he attempted to purchase cocaine at an off-base gas station while in uniform. After carefully examining the submissions of counsel, the appellant's otherwise outstanding military record, and all

[2] The appellant's assignment of error is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).
[3] Unbeknownst to the appellant, the fellow officer and the unknown individual were part of a drug sting operation targeting the appellant.
[4] *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

of the facts and circumstances surrounding the offenses of which the appellant was found guilty, we do not find that the approved sentence is inappropriately severe.

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, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

JACKSON, Senior Judge participated in the decision of this Court prior to his reassignment on 15 July 2010.

OFFICIAL

STEVEN LUCAS
Clerk of the Court