UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic WILLIAM R. CHOPE
United States Air Force

ACM S31769

15 August 2011

Sentence adjudged 22 December 2009 by SPCM convened at Andersen Air Force Base, Guam. Military Judge: Mark L. Allred (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 5 months.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford and Major Michael S. Kerr.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Scott C. Jansen; Major Charles G. Warren; and Gerald R. Bruce, Esquire.

Before

ORR, ROAN, and HARNEY
Appellate Military Judges

PER CURIAM:

Consistent with his pleas, the appellant was convicted by a military judge, sitting as a special court-martial, of one specification of failing to obey an order, and three specifications of assault consummated by a battery, in violation of Articles 92 and 128, UCMJ, 10 U.S.C. §§ 892, 928. The adjudged and approved sentence consists of a bad-conduct discharge and confinement for 5 months. The appellant asserts that his sentence is inappropriately severe.[1]

[1] The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Background

The appellant was stationed at Andersen Air Force Base, Guam, and lived there with his wife AW, and their infant daughter. The appellant and AW had a tumultuous marriage which caused AW to be unfaithful to the appellant. After learning of her infidelity, the appellant physically assaulted her on multiple occasions. In response, the appellant's commander imposed nonjudicial punishment on the appellant in July 2009 and again in November 2009 after the appellant assaulted AW on 12 October 2009. The following day, the appellant's first sergeant, Master Sergeant (MSgt) BT gave the appellant a no-contact order which stated that the appellant was "to have no contact with [AW] directly or indirectly, orally or in writing," unless he had permission from a supervisor. On 12 November 2009, MSgt BT gave the appellant permission to speak to AW only by phone "in order to facilitate some financial issues" involving their daughter.

During the phone call, the appellant and AW got into an argument concerning a joint credit card. He then asked AW to pick him up so that he could visit their daughter. AW hesitantly agreed and drove the appellant to her government quarters on Andersen AFB so he could see their daughter. During the visit, the appellant resumed the argument concerning the credit card. The argument escalated and he told AW that if she did not give him the credit card, he would hurt her. When AW refused, the appellant told her that he had nothing to lose and that he was going back to Florida. He then went to the kitchen, retrieved a paring knife, and threatened AW with it. He grabbed her, slammed her head onto the floor, and hit her on top of her head with both the knife handle and his hand. When AW screamed for help, the appellant took her onto the ground, and used a "pillow or blanket" to silence her screams. The appellant continued demanding that she return the credit card, and she continued refusing. At one point, he pointed the handle of the knife at her thigh. When AW tried to escape, he kicked her leg with his foot, but she never gave him the credit card.

Sentence Severity

On appeal, the appellant argues that the bad-conduct discharge he received was inappropriately severe because he has good rehabilitation potential. He asserts he and AW are divorced and this misconduct will not be repeated. He also points out that he has no derogatory marks in his military records that are unrelated to the incidents stemming from his marriage, and that his parenting ability was never questioned at trial. He asks this Court to reassess his sentence and disapprove the punitive discharge.

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 384-85 (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).

After careful consideration of the entire record and his appellate submissions, we are not persuaded by the appellant's arguments. The appellant assaulted his wife on multiple occasions and disobeyed an order given to prevent future assaults. Contrary to the appellant's assertions, his divorce from AW does not excuse his prior misconduct or prevent future misconduct from occurring. The fact that he shares the responsibility of raising his daughter with AW requires future interaction with her. Based upon the character of the appellant, the nature and seriousness of his offenses, and the entire record of trial, we do not find his sentence 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.

OFFICIAL

STEVEN LUCAS
Clerk of the Court