

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class CARL D. CODDINGTON JR.
United States Air Force**

ACM 36236

24 August 2006

Sentence adjudged 7 January 2005 by GCM at Holloman Air Force Base, New Mexico. Military Judge: Barbara E. Shestko.

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall and Major David P. Bennett.

Appellate Counsel for the United States: Colonel Gary F. Spencer and Lieutenant Colonel Robert V. Combs.

Before

ORR, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

Contrary to his pleas, the appellant was found guilty of wrongfully using cocaine, Percocet, and Vicodin in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A general court-martial comprised of officer and enlisted members sentenced the appellant to a bad-conduct discharge, confinement for 6 months, and reduction to the lowest enlisted grade. The convening authority approved the findings and sentence as adjudged. On appeal, the appellant asserts that the evidence supporting his conviction for wrongfully using the three drugs is legally and factually insufficient and asks that we find his sentence to be inappropriately severe.¹ We find both assignments of error to be without merit and affirm.

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of

¹ Both assignments of error were filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are ourselves convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

After carefully reviewing the record, we conclude there is sufficient competent evidence in the record of trial to support the members' findings. The testimony of the two fact witnesses was credible and compelling. Although trial defense counsel was able to point out minor inconsistencies in their respective testimonies, neither witness wavered in regard to the essential facts – that they personally observed the appellant use each of the three drugs. Trial defense counsel was unable to present convincing reasons why either of the two witnesses would lie in regard to the allegations. Thus, we are personally convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325; Article 66(c), UCMJ, 10 U.S.C. § 866(c).

This Court has the authority to review sentences pursuant to Article 66(c), UCMJ, and to reduce or modify sentences we find inappropriately severe. Generally, we make this determination in light of the character of the offender and the seriousness of his offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We may also take into account disparities between sentences adjudged for similar offenses. *United States v. Wacha*, 55 M.J. 266, 267 (C.A.A.F. 2001). Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise of clemency. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1986). After carefully examining the submissions of counsel and taking into account all the facts and circumstances surrounding the crimes of which the appellant was found guilty, we do not find the appellant's sentence inappropriately severe. *Snelling*, 14 M.J. at 268.

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

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator