UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JAMON D. CURRY
United States Air Force

ACM S31182 (f rev)

08 May 2008

Sentence adjudged 25 September 2006 by SPCM convened at Ellsworth Air Force Base, South Dakota. Military Judge: Steven J. Ehlenbeck (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 70 days, and reduction to E-1.

Appellate Counsel for the Appellant: 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 Major Donna S. Rueppell.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

PER CURIAM:

This case is being considered on further review. On 24 September 2007, we returned this case to the Judge Advocate General for remand to the convening authority to withdraw the ambiguous action and substitute a corrected action and promulgating order. The case has been returned to this Court and we now consider the appellant's contention that the sentence is inappropriately severe[1].

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[1] We note that in our first opinion in this case, dated 24 September 2007, we stated this issue was submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), however it was not submitted pursuant to *Grostefon*.

The appellant pled guilty to a single specification of being absent without leave in violation of Article 86 UCMJ, 10 U.S.C. § 886. He was sentenced by a military judge sitting as a special court-martial to reduction to a bad-conduct discharge, confinement for 3 months, and reduction to the grade of E-1. The convening authority approved only so much of the sentence that provides for a bad conduct discharge, confinement for 70 days, and reduction to the grade of E-1.

The appellant had amassed a gambling debt of approximately $5000. As the appellant describes it, the money was due "to the type of individuals you don't want to be in debt to. One organization and individual in particular, who I will not name based on my ongoing safety concerns, was going to physically harm me if I did not pay them thousands of dollars and soon.[2]"

Rather than returning from leave in Arizona, the appellant decided to stay with a friend and work a high-paying construction job for approximately 67 days to earn enough money to voluntarily return to Ellsworth AFB and pay off his debts.

We have examined the record of trial, the assignment of error and the government's reply thereto. Although the appellant asserts the sentence is inappropriately severe, we find to the contrary.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005); *United States v. Christian*, 63 M.J. 714, 717 (A.F. Ct. Crim. App. 2006). 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. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006). We have a great deal of discretion in determining whether a particular sentence is appropriate, but 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); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004).

The maximum possible punishment in this case was a bad conduct discharge, 12 months of confinement, 2/3 forfeiture of pay per month for 12 months and reduction to E-1. His adjudged sentence did not include forfeitures and included only 3 months of confinement. This was reduced by the convening authority to 70 days in order to help the appellant with an employment opportunity. Given the nature of the appellant's offense, and considering the appellant's time in service, military record and all other matters in the record of trial, we find nothing inappropriately severe in the approved punishment. *See United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

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[2] The military judge explored the possibility of a duress defense and we are satisfied that the plea was provident. The appellant admitted returning to base would have actually protected him from the individual in question.

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, GS-11, DAF
Clerk of the Court