UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant RANDY J. DARJEAN, JR.
United States Air Force

ACM 35938 (f rev)

26 September 2007

Sentence adjudged 24 January 2004 by GCM convened at Hickam Air Force Base, Hawaii. Military Judge: Dawn R. Eflein.

Approved sentence: Bad-conduct discharge, confinement for 5 years, total forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Terry L. McElyea, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Matthew S. Ward, Major Steven R. Kaufman, and Captain Daniel J. Breen.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

This case is before our Court for further review because the original action was set aside. *United States v. Darjean*, 63 M.J. 330 (C.A.A.F 2006). Our superior court returned the case to The Judge Advocate General for remand for a new staff judge advocate's recommendation and convening authority's action to comply with *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). On 27 February 2007, the convening authority completed a new action, after receiving accurate advice from the SJA and in compliance with *Emminizer*. The appellant continues to allege the military judge abused her discretion when she admitted evidence of the appellant's prior sexual misconduct

with his teenage sister-in-law.[1] We have already considered this issue and stand by our previous holding. *See United States v. Darjean*, ACM 35938 (A.F. Ct. Crim. App. 21 Dec 2005) (unpub. op.).

In his final assignment of error, the appellant alleges that his sentence, consisting of a bad-conduct discharge, confinement for 5 years, forfeiture of all pay and allowances, and reduction to the grade of E-1, is inappropriately severe. We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Healy*, 26 M.J. 394 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Mamaluy*, 27 C.M.R. 176 (C.M.A. 1959).

We have reviewed the record of trial, the errors assigned by the appellant, and the government's reply thereto. In determining the appropriateness of a sentence, this Court exercises its "highly discretionary" powers to assure that justice is done and the appellant receives the punishment he deserves. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). Performing this function does not authorize this Court to engage in the exercise of clemency. *Healy*, 26 M.J. at 395-96. The primary manner in which we discharge this responsibility is to give, "individualized consideration" to an appellant "on the basis of the nature and seriousness of the offense and the character of the offender." *Snelling*, 14 M.J. at 268 (quoting *Mamaluy*, 27 C.M.R. at 180-81). After a careful review of the appellant's case, we hold that the appellant's sentence is not inappropriately severe.

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; *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 Court

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