

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Technical Sergeant TIMOTHY C. DAVENPORT
United States Air Force**

ACM 35244

7 November 2003

Sentence adjudged 7 May 2002 by GCM convened at RAF Mildenhall, United Kingdom. Military Judge: Thomas W. Pittman.

Approved sentence: Bad-conduct discharge and reduction to E-3.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Spencer R. Fisher (legal intern).

Before

**BRESLIN, MOODY, and GRANT
Appellate Military Judges**

PER CURIAM:

At a general court-martial, the appellant was convicted, in accordance with his pleas, of one specification of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A panel of officer and enlisted members sentenced the appellant to a bad-conduct discharge and reduction to E-3. The convening authority approved the adjudged sentence. In an issue raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant argues that his sentence is inappropriately severe. We disagree and affirm.

This Court may only affirm those findings and sentences we find are 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). In determining sentence appropriateness, we must exercise our judicial powers to assure that justice is done and that the accused receives the punishment he or she deserves. Performing this function does not authorize this

Court to exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). We review issues of sentence appropriateness to determine whether, considering the entire record, the character of the appellant and the nature of the offenses for which he is being sentenced, the sentence adjudged or approved is appropriate. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Applying this standard, we find that the appellant's sentence is not inappropriately severe.

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

HEATHER D. LABE
Clerk of Court