UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman WILLIAM H. DAVENPORT
United States Air Force

ACM S32005

26 June 2013

Sentence adjudged 10 November 2011 by SPCM convened at Shaw Air Force Base, South Carolina. Military Judge: Terry A. O'Brien.

Approved Sentence: Bad-conduct discharge and reduction to E-2.

Appellate Counsel for the Appellant: Major Andrew J. Unsicker.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Rhea A. Lagano; Captain Erika L. Sleger; and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and HECKER
Appellate Military Judges

PER CURIAM:

At a special court-martial, the appellant was convicted, consistent with his pleas, of absence without authority, willful dereliction of duty, and false official statements, in violation of Articles 86, 92, and 107, UCMJ, 10 U.S.C. §§ 886, 892, 907. Officer members adjudged a sentence of a bad-conduct discharge and reduction to the grade of E-2. The convening authority approved the sentence as adjudged. On appeal, the appellant contends his sentence is inappropriately severe. Finding no error prejudicial to the substantial rights of the appellant, we affirm.

Background

In early 2011, the appellant was informed he was being transferred to Kunsan Air Base, Korea, with a proposed departure date of 7 August 2011. He started completing the mandatory out-processing checklist, as he had been directed. Meanwhile, the appellant then began his first serious relationship with a woman he met through a friend in Michigan. This relationship was mostly long distance but he believed they were in love, and the upcoming transfer made the relationship more stressful. In his guilty plea inquiry, the appellant described the stress he experienced as his departure date became closer.

When his supervisors asked him if everything was going well with his out-processing, he lied on multiple occasions and told them it was with the intent to deceive them. In fact, he had stopped the out-processing tasks, completing less than half of the required items. Instead of staying to finish it, he intentionally decided not to do so and went on leave to Florida to see his family and girlfriend. This leave was supposed to be taken en route to Korea but, because he had not completed his out-processing, he was not authorized to make this trip. After being absent for approximately 10 days, he returned to his duty station when he was contacted by his supervisors about the out-processing problems they had just discovered.

Sentence Severity

The appellant argues that the adjudged and approved sentence which includes a bad-conduct discharge is inappropriately severe in light of the mitigation evidence that was adduced at trial, including information from a psychologist about his difficult childhood and mental health issues. We review sentence appropriateness de novo, *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005), making such determinations in light of the character of the offender, the nature and seriousness of his offense, 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 sub nom. Bare v. U.S. Air Force*, 65 M.J. 35 (C.A.A.F. 2007). Although we are accorded great 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). Given the nature of all the facts and circumstances of this case, we have no reason to conclude that the adjudged and approved sentence is inappropriately severe for these offenses and this offender. Any sentence relief under these circumstances would amount to clemency. *Healy*, 26 M.J. at 396.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.[1] Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the findings and sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court

[1] Though not raised as an issue on appeal, we note that the overall delay of more than 540 days between the time of docketing and review by this Court is facially unreasonable. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). Having considered the totality of the circumstances and the entire record, we find that the appellate delay in this case was harmless beyond a reasonable doubt. *Id.* at 135-36 (reviewing claims of post-trial and appellate delay using the four-factor analysis found in *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). *See also United States v. Harvey*, 64 M.J. 13, 24 (C.A.A.F. 2006); *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002).