UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JENNIFER M. DAVID
United States Air Force

ACM S31122

26 September 2007

Sentence adjudged 19 April 2006 by SPCM convened at Fort Meade, Maryland. Military Judge: David F. Brash.

Approved sentence: Bad-conduct discharge and a reprimand.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jefferson E. McBride.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

PER CURIAM:

We have reviewed the record of trial, the assignment of error,[1] the government's answer thereto and the additional documents, regarding the sentences in companion cases, admitted by this Court on the request of both parties. We have carefully considered the appellant's assertion that her sentence was excessively harsh punishment when four closely related cases involving co-actors with the appellant did not result in a punitive discharge.

This Court is given the power and responsibility of determining whether a sentence is correct in law and fact. Article 66(c), UCMJ, 10 U.S.C. § 866(c). Generally, sentence appropriateness should be judged by "individualized consideration" of the

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

particular accused "on the basis of the nature and seriousness of the offense and the character of the offender." *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

As an exception to this general rule of "individualized consideration," courts of criminal appeals will consider the sentences of others "when there are highly disparate sentences in closely related cases." *United States v. Olinger*, 12 M.J. 458, 460 (C.M.A. 1982). Our review in such cases address three questions: (1) Whether the cases are "closely related;" (2) Whether the cases resulted in "highly disparate" sentences; and (3) Whether there is a rational basis for the differences between or among the cases. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999).

Having completed the appropriate review, this Court concludes that while the appellant's case is "closely related" we do not find the sentences "highly disparate." While the appellant was the only individual, of the closely related cases, to receive a punitive discharge, she was also the only individual to not be reduced in rank by the panel, to not be confined and to not be ordered to forfeit pay.[2] The lack of any confinement is particularly significant in light of the maximum permissible of 12 months and her status as a single mother of two at trial. Clearly the panel gave her "individualized consideration" before imposing her sentence.

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

AFFIRMED.

Judge Brand did not participate.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of the Court

[2] The parties submitted documentation as to the sentences of three other individuals. The appellant's brief names a fourth co-actor but no records were submitted to this court reflecting the sentence of the final co-actor. Our evaluation was based upon the information submitted.