UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman RODERICK J. DAVIS
United States Air Force

ACM 35490 (f rev)

18 August 2005

Sentence adjudged 10 December 2002 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: Steven B. Thompson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 27 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Major Terry L. McElyea, Major Sandra K. Whittington, and Major Andrew S. Williams.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel David N. Cooper, Lieutenant Colonel Gary F. Spencer, and Major Kevin P. Stiens.

Before

BROWN, ORR, and MOODY
Appellate Military Judges

OPINION OF THE COURT
UPON FURTHER REVIEW

PER CURIAM:

A military judge sitting alone as a general court-martial found the appellant guilty, in accordance with his pleas, of committing carnal knowledge in violation of Article 120, UCMJ, 10 U.S.C. § 920, committing an indecent act upon a female under the age of 16 and contributing to the delinquency of three minors in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge sentenced the appellant to a dishonorable discharge, confinement for 30 months, and reduction to E-1. The convening authority reduced the amount of confinement to 27 months, and forwarded the record for review by this Court under Article 66(c), UCMJ, 10 U.S.C. § 866(c).

On 21 March 2005, this Court returned the record of trial to The Judge Advocate General for remand to the convening authority because we determined that the convening authority's action was ambiguous. *United States v. Davis*, ACM 35490 (A.F. Ct. Crim. App. 21 Mar 2005) (unpub. op.). On 3 April 2005, the convening authority completed a new action approving a sentence of a dishonorable discharge, confinement for 27 months, and reduction to E-1. The new action also directed that the appellant receive seven days credit against his sentence to confinement. Thereafter, the convening authority forwarded the record for review by this Court under Article 66(c), UCMJ.

The appellant has submitted the record for further review. The appellant acknowledged that the convening authority completed a new action and did not assert any additional assignments of error. However, in our 21 March 2005 opinion we deferred consideration of the appellant's assertion that his sentence was inappropriately severe.[1] Specifically, the appellant argues that his sentence is too severe because he is a first-time offender, he pled guilty, and has accepted responsibility for his crimes. Additionally, the appellant avers that he is not a danger to himself or society and his family urgently needs his support.

Under Article 66(c), UCMJ, this Court has a duty to affirm only such findings and sentence that are correct in fact and law, and it requires that we affirm only so much of the sentence as we find "should be approved." Additionally, this Court must give "'individualized consideration' of the 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)). Assessing sentence appropriateness "involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

Considering the nature and seriousness of the offenses, and having given individual consideration to the appellant, we find the sentence to be appropriate. 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

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator

[1] This assignment or error is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).