UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class CHRISTOPHER M. DEBBAS
United States Air Force

ACM S31052

30 March 2007

Sentence adjudged 10 January 2006 by SPCM convened at McConnell Air Force Base, Kansas. Military Judge: Barbara E. Shestko (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

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

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Major Nurit Anderson.

Before

BROWN, BECHTOLD, and BRAND
Appellate Military Judges

OPINION OF THE COURT

PER CURIAM:

In accordance with his plea, the appellant was convicted of one specification of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. His adjudged and approved sentence consists of a bad-conduct discharge, confinement for 4 months, and reduction to the grade of E-1[1].

Appellant and three others; Staff Sergeant (SSgt) H, Airman First Class (A1C) S, and Airman (Amn) B, decided they would use cocaine one Friday night. At the request of the group, A1C S went to a drug dealer he knew and purchased cocaine. At SSgt H's apartment,

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[1] The convening authority deferred the reduction in rank and forfeitures of pay until action, and waived mandatory forfeitures for 4 months or release from confinement.

some of the cocaine was divided into lines and each of the four snorted two lines. Very shortly thereafter, the appellant was selected for a random urinalysis which came back positive. Appellant was questioned and confessed.

The appellant asserts the portion of his sentence involving a bad-conduct discharge is inappropriately severe in light of the fact that SSgt H and Amn B, who used drugs with appellant, did not receive punitive discharges because of favorable pretrial agreements (PTA). We have reviewed the record of trial, the assignment of error, and the government's answer thereto, and find appellant's contention to be without merit.

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). The power to review a case for sentence appropriateness, including relative uniformity, is vested in the Courts of Criminal Appeals. Article 66(c); *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999). The general rule regarding sentence comparison is that courts-martial are not permitted to consider sentences in other cases when determining an appropriate sentence for the accused before them. *United States v. Barrier,* 61 M.J. 482, 485 (C.A.A.F. 2005). The rule has been applied to appellate review, where sentence appropriateness should be judged by "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)). "[T]he military system must be prepared to accept some disparity in the sentencing of codefendants, provided each military accused is sentenced as an individual." *United States v. Durant,* 55 M.J. 258, 261 (C.A.A.F. 2001).

A recognized exception to the rule against sentence comparison for determining appropriateness is a situation involving connected or closely related cases with highly disparate sentences. *United States v. Barrazamartinez*, 58 M.J. 173, 176 (C.A.A.F. 2003); *United States v. Hawkins,* 37 M.J. 718, 722 (A.F.C.M.R. 1993); *United States v. Capps,* 1 M.J. 1184, 1187 (A.F.C.M.R. 1976). The comparison of the sentences is not limited to the sentences in question but may be compared in relation to the maximum punishment.[2] *Lacy*, 50 M.J. at 289. The appellant bears the burden of demonstrating that any cited cases are "closely related" to his case and that the sentences are "highly disparate." *Id*. at 288.

The first criterion is that there exists a correlation between each of the accused and their respective offenses. *Hawkins*, 37 M.J. at 722. The offense of wrongfully using cocaine on 4 February 2005 involved four individuals: the appellant, SSgt H, Amn B and A1C S.[3] These cases are closely related.

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[2] The maximum punishment in the appellant's case was the jurisdictional limit of a special court-martial.
[3] The references in the record to A1C S indicate he, at the request of the others, purchased the cocaine and his court-martial was prior to the appellant's – his sentence is not part of the comparison.

The next criterion is that the sentences are "highly disparate." *Lacy*, 50 M.J. at 288. SSgt H's approved sentence included confinement for 9 months, forfeitures of $823.00 per month for 9 months, reduction to E-1, and a reprimand. Amn B's approved sentence included 4 months confinement and reduction to E-1. Both individuals had PTAs in which the convening authority agreed to not approve a bad-conduct discharge.[4] Appellant offered a similar PTA on 9 Dec 05, after the co-actors had been court-martialed - it was rejected. The appellant has failed to meet his burden in demonstrating the sentences are "highly disparate."

Assuming arguendo, he has met that burden, there is a rational basis for the disparity. As accurately pointed out by the trial defense counsel in her clemency submission, the evidence against the appellant was the strongest, he confessed and had a positive urinalysis. Furthermore, SSgt H and Amn B went to court prior to the appellant. Additionally, SSgt H agreed to testify against his co-accused pursuant to his PTA. By the time the appellant made his offer, he was too late. His two co-actors had already received favorable sentences as a result of their PTAs, and it appears there was no incentive for the convening authority to give him a PTA.

We have a great deal of discretion in determining whether a particular sentence is appropriate, but are not authorized to engage in exercises of clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004). After a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the appellant's sentence which includes a bad-conduct discharge is not inappropriately severe, nor was it "highly disparate" when compared to the companion cases.

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 findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

[4] The same convening authority acted in all three cases.