UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JACOB H. DEGUTIS
United States Air Force

ACM S31455

18 November 2008

Sentence adjudged 22 February 2008 by SPCM convened at McGuire Air Force Base, New Jersey. Military Judge: Paula B. McCarron (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 30 days, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Coretta E. Gray.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

PER CURIAM:

Pursuant to the appellant's pleas, a military judge sitting as a special court-martial convicted him of one specification of wrongful use of cocaine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged and approved sentence consists of a bad-conduct discharge, 30 days confinement, and reduction to E-1. On appeal, the appellant asks the court to disapprove his bad-conduct discharge. The basis for his request is that he opines, in light of his outstanding work performance and extensive cooperation with

the Air Force Office of Special Investigations (AFOSI), his sentence to a bad-conduct discharge is inappropriately severe.* Finding no error, we affirm.

Background

On 13 October 2007, the appellant used cocaine with two acquaintances in the bathroom of a local tavern. In late October 2007, the appellant was randomly selected for a urinalysis. On that same day, in compliance with the random urinalysis order, the appellant provided a urine sample. That sample was sent to the Air Force Drug Testing Laboratory and subsequently tested positive for the cocaine metabolite.

On 26 October 2007, AFOSI received word of the appellant's positive urinalysis results and summoned the appellant to their office for an interview. After a rights advisement, the appellant waived his rights and agreed to answer questions. Initially the appellant was less than forthcoming; he told AFOSI agents that he did not know how the cocaine got into his system and that possibly someone spiked his food with cocaine. After additional questioning, the appellant confessed to using cocaine. From 5 November 2007 until 8 January 2008, AFOSI used the appellant as a confidential source; however, the appellant did not generate any additional cases for AFOSI.

Inappropriately Severe Sentence

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make 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*, 65 M.J. 35 (C.A.A.F. 2007). While we have a great deal of 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).

In the case at hand, use of illegal drugs is a serious offense which compromises the appellant's standing as a military member. Moreover, the appellant's military record is less than sterling – he received non-judicial punishment for driving under the influence and for fleeing the scene of an accident. Additionally, while the appellant worked with AFOSI, his work was not extensive and did not generate additional cases for AFOSI. Put simply, after carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offense of which he was found guilty, we do not find the appellant's sentence inappropriately severe.

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* This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

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, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court