UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DANIEL P. DUNCAN
United States Air Force

ACM 36997

31 October 2007

Sentence adjudged 20 March 2007 by GCM convened at Keesler Air Force Base, Mississippi. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Tiaundra Sorrell.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Roberto Ramirez.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

PER CURIAM:

Consistent with his pleas, the appellant was convicted by general court-martial of one specification of possessing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. A military judge sentenced him to a dishonorable discharge, confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1. Acting pursuant to the terms of a pretrial agreement, the convening authority approved only so much of the sentence as provided for a dishonorable discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1.

The appellant asserts the Staff Judge Advocate (SJA) erred by failing to advise the convening authority about a limitation on his power to enter sex offenders into the Air Force Return to Duty Program (RTDP). Finding no error, we affirm.

In his clemency submission, the appellant and his counsel asked the convening authority to enter the appellant into the RTDP or, in the alternative, to approve only a bad-conduct discharge instead of the adjudged dishonorable discharge. The SJA, in his addendum to the SJA's recommendation (SJAR), advised the convening authority he was required to consider the defense submission prior to taking action and attached a copy of the entire defense submission to the addendum for that purpose. The SJA also recommended, without further elaboration, that the convening authority not approve the appellant's request for entry into the RTDP and continued to recommend, as he had in the SJAR, that the convening authority approve the adjudged dishonorable discharge. Neither the SJAR nor the SJAR addendum commented on the requirements established by the Air Force for entry into the RTDP.

The requirements for entry into the RTDP are established by Air Force Instruction (AFI) 31-205, *The Air Force Corrections System* (7 Apr 2004). That instruction prohibits entry of sex offenders into the program unless the prohibition is waived by the Air Force Clemency and Parole Board. AFI 31-205, ¶ 11.6.3.7. Citing this provision, the Clemency and Parole Board subsequently advised the convening authority that the Board declined to waive the prohibition for the appellant and that he would therefore not be entered into the RTDP.

The appellant asserts the SJAR addendum should have explained the RTDP to the convening authority and, specifically, advised him of the prohibition on entry of sex offenders into the program without a waiver from the Clemency and Parole Board. The appellant speculates that had the convening authority been so advised, he would have provided additional information to the Board to justify a waiver or would have approved no more than a bad-conduct discharge or granted other alternative relief.

We review post-trial processing issues de novo. *United States v. Bakcsi*, 64 M.J. 544 (A.F. Ct. Crim. App. 2006). Rule for Courts-Martial 1106 establishes the required contents of both the SJAR and any addendum. That rule requires that the SJA respond to allegations of legal error raised by the defense, but does not require comment on defense requests for clemency. *United States v. Foy*, 30 M.J. 664, 665-66 (A.F.C.M.R. 1990). This includes comment on an appellant's request for enrollment in the RTDP. *United States v. Tosco,* ACM S31035 (A.F. Ct. Crim. App. 31 May 2007) (unpub. op.); *United States v. Mulray*, ACM S30410 (A.F. Ct. Crim. App. 28 March 2005) (unpub.op.); *United States v. Spencer*, ACM S30204 (A.F. Ct. Crim. App. 6 April 2004) (unpub. op.).

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, GS-11, DAF
Clerk of the Court