UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman MARLO D. ELLIS
United States Air Force

ACM 36135

31 May 2006

Sentence adjudged 6 August 2004 by GCM convened at Andersen Air Force Base, Guam. Military Judge: Dawn R. Eflein.

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Kimani R. Eason.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We reviewed the record of trial, the appellant's assignment of errors, and the government's reply thereto. The appellant asserts, inter alia, that Specifications 1 and 3 of Charge I, which allege the appellant committed an indecent assault upon, and communicated indecent language to, another Airman, in violation of Article 134, UCMJ, 10 U.S.C. § 934, are multiplicious with the Specification of Charge III, which alleges the appellant maltreated that same Airman in violation of Article 93, UCMJ, 10 U.S.C. § 893. Because the allegations that form the basis for the maltreatment specification are "factually the same" allegations as those underlying the two Article 134, UCMJ, specifications, we concur. *United States v. Givens*, __ M.J. __ No. 06-0273/AF (Daily Journal 11 May 2006). We therefore dismiss the Specification of Charge III. *See id.* We

resolve the remaining assignments of error adversely to the appellant.[1] *See United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002); *United States v. McGinty*, 38 M.J. 131, 132 (C.M.A. 1993); *United States v. Turner*, 25 M.J. 324, 324-25 (C.M.A. 1987).

Having granted the appellant relief with regard to his claim of multiplicity, we next analyze the case to determine whether we can reassess the sentence. *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002) (citing *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986)). We conclude that we can. The error had no impact on the evidence presented at trial, and only minimal impact on the maximum sentence.[2] Reassessing the sentence, we conclude the members would have awarded the same punishment regardless of the error: A bad-conduct discharge, confinement for 3 months, and reduction to E-1. We further find that the sentence is not excessive for this offender and his crimes. *See United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959).

The findings, as modified, and sentence, as reassessed, 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 findings, as modified, and sentence, as reassessed, are

AFFIRMED.

OFFICIAL

THOMAS T. CRADDOCK, SSgt, USAF
Court Administrator

[1] Because we dismissed the Specification of Charge III, we need not address the appellant's parallel claim that the charge amounted to an unreasonable multiplication of charges, or his contention that the evidence was legally and factually insufficient to sustain his conviction for that offense.

[2] The maximum sentence, as calculated at trial, included 13 years and 6 months of confinement, rather than the correct total of 12 years and 6 months.