UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class BENNETT J. FOX
United States Air Force

ACM 35912

28 February 2006

Sentence adjudged 30 October 2003 by GCM convened at Hanscom Air Force Base, Massachusetts. Military Judge: Patrick M. Rosenow (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Andrew S. Williams, and Major Sandra K. Whittington.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Major John C. Johnson, and Captain Stacey J. Vetter.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

The appellant was convicted, contrary to his pleas, of two specifications of making false official statements and one specification of malingering, in violation of Articles 107 and 115, UCMJ, 10 U.S.C. §§ 907, 915. The military judge, sitting alone as a general court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 6 months, and reduction to E-1. The convening authority approved the findings and sentence as adjudged. On appeal, the appellant raises one error alleging ineffective assistance of counsel, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

In order for an individual to claim ineffective assistance of counsel, an appellant must overcome a strong presumption that defense counsel has "rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). The appellant must prove that counsel's performance was deficient and this deficiency prejudiced the appellant. *Id.* at 687. The appellant has not offered any evidence in his post-trial declaration or in any other form that overcomes the presumption that his counsel acted reasonably and rendered adequate assistance. *See Id*. A thorough review of the record indicates that the appellant's trial defense team presented a vigorous defense during all phases of the trial. In motion practice, the appellant's counsel convinced the military judge to suppress evidence that forced the government to withdraw one of the charges and specifications. The defense presentation also led the military judge to find their client not guilty of two additional specifications. Finally, the trial defense counsel persuaded the judge to find the two false official statement specifications and the malingering specification multiplicious for sentencing purposes.

The appellant's post-trial affidavit avers that his counsel did not adequately investigate an alleged assault upon the appellant by Master Sergeant G, and questions why his counsel did not further investigate the medications the appellant was taking. The record reveals, however, that the alleged assault was, in fact, presented to the military judge during the findings phase of the trial. Apparently the trial defense counsel made a tactical decision to not further explore this alleged incident, probably because it would not have led to a plausible defense to any of the charges. The record also contains numerous references to the medications the appellant had been prescribed (including conflicting evidence regarding whether the appellant was actually ingesting them). The appellant, in his affidavit, fails to indicate how further exploration of this topic would have possibly affected the outcome of his trial. Based on our careful reading of the entire record, we find the appellant's claim of error to be without merit. *See Id*.

The 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 findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court