UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JUSTIN V. GILLESPIE
United States Air Force

ACM S30408

20 April 2005

Sentence adjudged 13 May 2003 by SPCM convened at Keesler Air Force Base, Mississippi. Military Judge: Thomas G. Crossan, Jr. (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of $767.00 pay per month for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Major Andrea M. Gormel.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Robert V. Combs.

Before

STONE, SMITH, and PETROW
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. In accordance with his pleas, the appellant was found guilty of various specifications of use and distribution of controlled substances. On appeal, he contends his trial defense counsel failed to advise him of his post-trial rights in adequate detail. Specifically, he claims he was not fully advised about his right to request disapproval of his adjudged forfeitures of pay or waiver of automatic forfeitures of pay in order to benefit his wife. He asks this Court to set aside the convening authority's action and return the case to the convening

authority for new post-trial processing on the grounds his counsel's advice amounts to ineffective assistance of counsel. We disagree and affirm.

Claims of ineffective assistance of counsel are reviewed de novo. *United States v. Key*, 57 M.J. 246 (C.A.A.F. 2002). The two-pronged test for ineffective assistance of counsel requires that the appellant demonstrate, first, that his counsel's performance was so deficient that he was not functioning as counsel within the meaning of the Sixth Amendment, and second, that his counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). On appellate review, there is a strong presumption that counsel is competent. *United States v. Grigoruk*, 56 M.J. 304, 306-07 (C.A.A.F. 2002). "Broad, generalized accusations are insufficient to satisfy the first prong" of the *Strickland* test. *Key*, 57 M.J. at 249. However, because of the "highly discretionary nature of the convening authority's clemency power," the threshold for demonstrating prejudice is low. *United States v. Lee*, 52 M.J. 51, 53 (C.A.A.F. 1999). Consequently, this Court will grant relief if the appellant makes "some colorable showing of possible prejudice." *Id*. (quoting *United States v. Wheelus*, 49 M.J. 283, 289 (C.A.A.F. 1998)).

Several days prior to trial, the appellant's defense counsel briefed him orally and in writing on his post-trial and appellate rights. The appellant signed a four-page document that explained these rights, including a detailed explanation of deferment and waiver of forfeiture of pay. His signature to this document acknowledged he read and understood these rights.

The appellant submitted a declaration to this Court in support of his allegation of ineffective assistance of counsel. In this declaration, he said he remembered signing the document advising him of his post-trial and appellate rights. However, he states that his defense counsel did not go into "great detail" in explaining this document and that he did not "fully understand" its contents and "what deferment and/or waiver of forfeitures meant." He further states he understood what deferment and waiver of forfeitures meant only after his appellate defense counsel explained it to him.

In his clemency submissions to the convening authority, the appellant requested only a reduction in confinement. In his declaration to this Court, he states he "did not ask for disapproval of the adjudged forfeitures or waiver or deferment of automatic forfeitures because my counsel suggested that I might be successful in asking to get my confinement reduced in clemency."

We have examined the post-trial and appellate rights advisement attached to the record of trial as an appellate exhibit and find that it is a complete and accurate explanation of the convening authority's ability to waive and defer

forfeitures. The appellate filings and the record as a whole "compelling demonstrate" the improbability of the appellant's claim that he was not fully advised of his right to request deferral and waiver of forfeitures. *See United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997) (fourth principle). Furthermore, we find trial defense counsel's post-trial clemency efforts on behalf of the appellant to be reasonable and appropriate. The appellant has not established that his trial defense counsel's performance was deficient. *Strickland*, 466 U.S. at 687.

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

ANGELA M. BRICE
Clerk of Court