UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JONATHAN P. GILLIAM
United States Air Force

ACM 35674

3 November 2005

Sentence adjudged 25 June 2003 by GCM convened at Lackland Air Force Base, Texas. Military Judge: Steven B. Thompson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 20 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Andrea M. Gormel, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Samantha M. Brock (legal intern).

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his plea of guilty by a military judge sitting as a general court-martial, of wrongfully and knowingly possessing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Contrary to his plea, he was also convicted of committing forcible sodomy with LND, a child under 12 years of age, in violation of Article 125, UCMJ, 10 U.S.C. § 925.[1] The military judge sentenced the appellant to a dishonorable discharge, confinement for 20 years, forfeiture of all pay and allowances, and reduction to E-1. The appellant was credited with 34 days of pretrial confinement. The convening authority approved the sentence as adjudged.

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[1] LND was the appellant's 4-year-old stepdaughter at the time the appellant committed this offense.

The appellant asserts that the evidence is legally and factually insufficient to sustain his conviction for forcible sodomy,[2] and that his sentence is inappropriately severe. For the reasons discussed below, we find no error but take action on the sentence.

Legal and Factual Sufficiency

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are ourselves convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

We conclude there is overwhelming evidence in the record of trial to support the court-martial's finding of guilty of forcible sodomy of LND. We also are convinced of the appellant's guilt beyond a reasonable doubt. *See Id.*; Article 66(c), UCMJ, 10 U.S.C. § 866(c).

Sentence Appropriateness

Article 66(c), UCMJ, provides that this Court "may affirm . . . the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." In *Jackson v. Taylor*, 353 U.S. 569, 576-77 (1957), the Supreme Court considered the legislative history of Article 66, UCMJ, and concluded it gave the (then) Boards of Review the power to review not only the legality of a sentence, but also whether it was appropriate. Our superior court has also determined that the Courts of Criminal Appeals have the power to, "in the interests of justice, substantially lessen the rigor of a legal sentence." *United States v. Lanford*, 20 C.M.R. 87, 94 (C.M.A. 1955). *See also United States v. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002).

"Generally, sentence appropriateness should be judged by 'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). Sentence comparison is generally inappropriate, unless this Court finds that any cited cases are "closely related" to the appellant's case and the sentences are "highly disparate." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (citing *United States*

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

v. Ballard, 20 M.J. 282, 283 (C.M.A. 1985)). There is no basis to engage in sentence comparison in this case.

We have given individualized consideration to this particular appellant and carefully reviewed the facts and circumstances of this case. The sentence is within legal limits and no error prejudicial to the appellant's substantial rights occurred during the findings or sentencing proceedings. Nonetheless, we find that a lesser sentence of a dishonorable discharge, confinement for 18 years, forfeiture of all pay and allowances, and reduction to E-1 should be affirmed.

Conclusion

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). However, we affirm only so much of the sentence as includes a dishonorable discharge, confinement for 18 years, forfeiture of all pay and allowances, and reduction to E-1. Accordingly, the findings and sentence, as modified, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court