UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant KARI M. GRUBBS
United States Air Force

ACM S30514

27 June 2005

Sentence adjudged 6 November 2003 by SPCM convened at Luke Air Force Base, Arizona. Military Judge: Anne L. Burman (sitting alone).

Approved sentence: Bad-conduct discharge and reduction to E-1.

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

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Heather L. Mazzeno.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

In accordance with her pleas, the appellant was found guilty of one specification of wrongfully using methamphetamine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Sitting alone as a special court-martial, the military judge sentenced the appellant to a bad-conduct discharge and reduction to E-1. The convening authority approved the findings and sentence as adjudged.

The appellant asks this Court to find her sentence inappropriately severe based upon the extenuating and mitigating circumstances surrounding her one-time use of methamphetamine and her documented mental health problems. She asks that we set aside her bad-conduct discharge or provide other appropriate relief. Finding her sentence to be appropriate, we affirm.

The appellant was a Squadron Intelligence Support Element Leader at Luke Air Force Base, Arizona, with more than seven years of service. On 4 May 2003, the appellant visited her cousin, who offered her a white powdery substance. Believing the substance to be cocaine, the appellant snorted two lines of the powder through a short straw. She later learned that the substance she used was methamphetamine.

In the appellant's pretrial agreement (PTA), the convening authority agreed to refer the charge and its specification to a special court-martial instead of a general court-martial. He also agreed to disapprove any adjudged confinement or hard labor without confinement. The PTA did not include any other limitations on the sentence.

At trial, during her unsworn statement, the appellant asked that she not be sentenced to a bad-conduct discharge. She continued to pursue this request with the convening authority in her post-trial clemency submissions. Throughout the process, the appellant presented an undeniably sympathetic explanation of her emotional problems as evidence of mitigation and extenuation. Indeed, her "excellent" duty performance is all the more remarkable in light of the severe emotional strain she suffered through the last five years of her service.

In determining the appropriateness of a sentence, this Court exercises its "highly discretionary" powers to assure that justice is done and the appellant receives the punishment she deserves. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). Performing this function does not authorize this Court to exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this responsibility is to give "individualized consideration" to an appellant "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)).

Drug use by a 27-year-old noncommissioned officer with more than seven years of military service is a serious offense, regardless of whether it was done to cope with extraordinary stress or significant mental health issues. We further note that "the adjudged sentence accorded with what the accused proposed to the convening authority" when she initiated the negotiations that resulted in her PTA. *United States v. Hendon*, 6 M.J. 171, 174 (C.M.A. 1979) (citing *United States v. Johnson,* 41 C.M.R. 49, 50 (C.M.A. 1969)). Absent evidence to the contrary, the PTA is a reasonable indication of the probable fairness and appropriateness of her sentence. *Id*. at 175.

Taking into account all of the facts and circumstances, we conclude that the appellant's sentence did not exceed "*relative* uniformity" or "rise to the level of an obvious miscarriage of justice or an abuse of discretion." *Snelling,* 14 M.J. at 269 (quoting *United States v. Olinger,* 12 M.J. 458, 461 (C.M.A. 1982)). In the final analysis, her arguments sound more like a request for clemency rather than sentence

appropriateness. *Healy,* 26 M.J. at 395. We hold that the appellant's sentence is not inappropriately severe.

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