UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JERRY M. HAMPTON
United States Air Force

ACM 36530

31 January 2007

Sentence adjudged 24 August 2005 by GCM convened at Yokota Air Base, Japan. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Captain Kimberly A. Quedensley, and Captain Timothy M. Cox.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Major Matthew S. Ward.

Before

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of conspiracy to commit larceny, making a false official statement to investigators, larceny, and forgery, in violation of Articles 81, 107, 121, and 123, UCMJ, 10 U.S.C. §§ 881, 907, 921, and 923. The military judge, sitting as a general court-martial, sentenced the appellant to a reduction to E-1, confinement for 20 months, and a bad-conduct discharge. The convening authority approved, in accordance with the pretrial agreement, only so much of the sentence as called for a reduction to E-1, confinement for 12 months, and a bad-conduct discharge. On appeal, the appellant raises one error pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). The error alleges ineffective assistance of counsel.

In order for an individual to establish 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 692. The appellant, in the case sub judice, stakes his ineffective assistance claim on the assertion that his trial defense counsel should have, but did not, request a sanity board to explore the effects of the appellant's use of a small amount of prescribed valium on his mental responsibility.

We find the appellant's *Grostefon* claim to be without merit. A thorough review of the record reveals that on 18 May 2005, the appellant's counsel did submit a written request to the convening authority for a sanity board. The request was disapproved, but it was, in fact, made by trial defense counsel. Thus, the predicate upon which the appellant's assertion of error is based is false. Further, we find that the issue of mental responsibility was fully explored by the military judge who noticed the reference to the appellant's valium use in the stipulation of fact. The appellant told the military judge that if it hadn't been for the valium "some decision making wouldn't have been the same" on the day he committed the conspiracy, larceny, and forgery offenses, but he nonetheless assured the military judge that he "knew what he was doing at the time." The military judge found no issue of mental responsibility, and we agree.

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

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator