UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DADRIEN R. HARRISON
United States Air Force

ACM 34496

22 July 2003

Sentence adjudged 8 February 2001 by GCM convened at RAF Lakenheath, United Kingdom. Military Judge: Rodger A. Drew (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 4 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Major Jeffrey A. Vires.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Lieutenant Colonel William B. Smith.

Before

VAN ORSDOL, BRESLIN, and ORR, W.E.
Appellate Military Judges

OPINION OF THE COURT

BRESLIN, Senior Judge:

In accordance with his pleas, the appellant was convicted of two specifications of conspiring with other airmen to commit assault and battery, in violation of Article 81, UCMJ, 10 U.S.C. § 881, two specifications of breach of the peace, in violation of Article 116, UCMJ, 10 U.S.C. § 916, one specification of maiming, in violation of Article 124, UCMJ, 10 U.S.C. § 924, and seven specifications of assault consummated by a battery, in violation of Article 128, UCMJ, 10 U.S.C. § 928. A military judge, sitting alone as a general court-martial, sentenced the appellant to a dishonorable discharge, confinement

for 4 years, total forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the sentence adjudged.

The appellant now contends the appellant's sentence is inappropriately severe, in light of the sentences received by his co-actors. We find no merit in this argument and affirm.

In the early morning hours of 29 April 2000, the appellant and a group of friends, including airmen Hurd, Hoxey, Hairston, Brown, Molden, Profit, Washington, and Williams, went to Cambridge, United Kingdom, to visit a dance club. The appellant took along his video camera to record the evening's events. The group was unable to gain admission to the crowded club. The appellant handed the camera to Airman (Amn) Hurd, and told him to start filming because he was going to hit the next person who walked down the street. The group of airmen encouraged him. The appellant then attracted the attention of a passer-by. When the gentleman responded, the appellant suddenly attacked him and punched him three or four times. Amn Hurd videotaped the assault. The appellant exulted before the camera and joined the other airmen in celebrating the unprovoked attack.

The appellant, still performing for the camera, declared that he would attack another unsuspecting victim. The group next encountered Mr. Walter Singh. While the camera was rolling, the appellant suddenly attacked Mr. Singh from behind, without notice or provocation, by punching him in the side of the head. The blow knocked Mr. Singh unconscious and he fell to the pavement, smashing several of his teeth. The group laughed and cheered. The appellant posed over the unconscious victim, celebrating the attack. They then ran to their cars, leaving the unconscious victim laying halfway into the street.

The group traveled to another club and gathered in the parking lot. The appellant ran the video camera while Amn Hoxey approached an unknown woman and urinated on her. The appellant and the rest of the group laughed and jeered.

The appellant then encouraged Amn Hurd to attack a passerby. As the appellant filmed the event, Amn Hurd attacked and punched an unknown male. The appellant encouraged him to hit the victim again and again.

The group then returned to the first club, and encouraged Amn Hoxey to assault someone. The appellant reminded Amn Hoxey that he had already knocked someone out, and that the camera was rolling. Amn Hoxey approached an unknown male and punched him. A friend of the victim came to his aid, and the group rushed up. Amn Hurd punched the friend in the head from behind.

The group then returned to the air base for the night. Sometime later, they watched the videotape of the assaults.

On 1 July 2000, the appellant again went out in Cambridge with a group of airmen intending to videotape unprovoked attacks on passers-by. On this night, the group included the appellant and airmen Sylve, Hairston, Downs, Pitts, and Brown. The appellant boasted about his attack on Mr. Singh, and encouraged others to assault someone. Eventually, other airmen attacked Mr. Oliver Slack and his brother, Gordon Slack, as they walked across a park. The appellant videotaped the assaults.

The victims noted the license plate of the vehicle, and reported it to the police. Security forces personnel at RAF Lakenheath, acting upon a tip from the local constabulary, stopped the group's car at the gate. They found the video camera in the car. The appellant tried to discard the videotape under a bush, but they found it as well. The videotape contained footage of the assaults on 29 April 2000 and 1 July 2000.

On 3 August 2000, the local constabulary interviewed the appellant in the presence of his solicitor. Confronted with the videotape, he admitted his role in the offenses.

The appellant elected trial before a military judge sitting alone and pled guilty, as indicated above, pursuant to the terms of a pretrial agreement capping confinement at 5 years. As noted above, the sentence adjudged and approved was a dishonorable discharge, confinement for 4 years, forfeitures of all pay and allowances, and reduction to E-1.

Before this Court, the appellant contends his sentence was inappropriately severe, considering the sentences of his co-actors: Amn Hurd and Amn Hoxey. This Court admitted for consideration the promulgating orders reflecting the findings and sentences in the courts-martial of these two airmen.

This Court is given the power and responsibility of determining whether a sentence is correct in law and fact. Article 66(c), UCMJ, 10 U.S.C. § 866(c). It is also given the "highly discretionary power to determine whether a sentence 'should be approved.'" *United States v. Lacy*, 50 M.J. 286, 287 (1999) (quoting Article 66(c), UCMJ). 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)).

As an exception to this general rule of "individualized consideration," courts of criminal appeals will consider the sentences of others "when there are highly disparate

sentences in closely related cases." *United States v. Olinger*, 12 M.J. 458, 460 (C.M.A. 1982). This Court originally indicated that we will examine other sentences as part of the review of sentence appropriateness where: 1) there is a direct correlation between each of the accused and their respective offenses; 2) the sentences are highly disparate; and 3) there are no "good and cogent reasons for the difference in punishment." *United States v. Thorn*, 36 M.J. 955, 959 (A.F.C.M. R. 1993); *United States v. Kent*, 9 M.J. 836, 838-39 (A.F.C.M.R. 1980). In *Lacy*, our superior court held,

> At the Court of Criminal Appeals, an appellant bears the burden of demonstrating that any cited cases are "closely related" to his or her case and that the sentences are "highly disparate." If the appellant meets that burden, or if the court raises the issue on its own motion, then the Government must show that there is a rational basis for the disparity.

Lacy, 50 M.J. at 288. The responsibility for determining sentence appropriateness is within the sound discretion of the courts of criminal appeals, subject to the review of our superior court on the "narrow question of whether there has been an 'obvious miscarriage [ ] of justice or abuse [ ] of discretion.'" *United States v. Sothen*, 54 M.J. 294, 296 (2001) (quoting *Lacy*, 50 M.J. at 288) (quoting *United States v. Dukes*, 5 M.J. 71, 73 (C.M.A. 1978)).

The appellant fails to surmount the first hurdle, for it is clear the three cases are not closely related. The appellant was convicted of different offenses than either Hurd or Hoxey. He was involved in the conspiracy, breach of the peace, and assault offenses on two different nights, while Hurd and Hoxey were only involved on 29 April 2000. Moreover, the appellant actually struck the blow that resulted in the maiming of Mr. Singh–clearly the single most aggravated crime, and the one carrying the greatest possible punishment. While Amn Hurd was also convicted of maiming, his role as an aider and abettor was completely different. Unlike the appellant, Amn Hoxey was not convicted of conspiracy or maiming, but was convicted and sentenced for several crimes unrelated to the appellant. While some of the specifications may have been related, the three cases were not closely related.

If it were necessary to do so, it would be easy to identify why the appellant's sentence was more substantial than the others: he deserved it. It was the appellant who originated the idea to engage in these unprovoked attacks and to film them for their own twisted enjoyment. The appellant personally committed the most serious assault upon Mr. Singh. The image of the appellant gloating over the inert figure of his grievously injured victim is especially chilling. The appellant also encouraged the others to imitate his crimes, often cajoling or taunting those who were otherwise reluctant to participate. Finally, it was the appellant who did it not once, but twice, until he was apprehended at the base gate. For these reasons, we find the appellant's argument to be without merit.

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 (2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

HEATHER D. LABE
Clerk of Court