UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant MASON A. HARSHBARGER
United States Air Force

ACM 37016

30 October 2008

Sentence adjudged 29 March 2007 by GCM convened at Little Rock Air Force Base, Arkansas. Military Judge: Grant L. Kratz (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 75 days, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Captain Vicki A. Belleau, and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Matthew S. Ward, and Captain G. Matt Osborn.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

PER CURIAM:

Consistent with the appellant's plea, a military judge sitting as a general court-martial convicted him of a single use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged and approved sentence consists of a bad-conduct discharge, confinement for 75 days, and reduction to E-1. The appellant today asserts that his sentence is inappropriately severe.* We find to the contrary and affirm.

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* The appellant raises this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Sentence Appropriateness

The appellant asserts that a sentence consisting of a bad-conduct discharge is inappropriately severe in light of several factors. First, he points to the fact that the parties agreed that the appellant thought he was only using marijuana at the time he was actually using cocaine. Apparently the appellant was unaware that a marijuana cigarette was laced with cocaine when he smoked it. He also points to his good duty performance as evidenced by numerous awards and his service in Iraq. Finally, he points to the fact that he had no disciplinary record prior to the charged offense. In response to these assertions, the appellee reminds the Court to consider the fact that the appellant was also reprimanded for a second marijuana use in the weeks prior to trial.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App.), *aff'd*, 65 M.J. 310 (C.A.A.F. 2007). We have a great deal of discretion in determining whether a particular sentence is appropriate, but are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *Rangel*, 64 M.J. at 686.

The appellant was a noncommissioned officer. He had been a noncommissioned officer for over two years at the time he decided to use marijuana. This fact, combined with his decision to use marijuana even after charges had been preferred against him, severely limits or eliminates the mitigating effect of the fact that he thought he was "only" using marijuana when he was using cocaine and that he had no disciplinary history prior to the charged offense. Considering his entire military record, we are satisfied the sentence is not inappropriately severe.

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

STEVEN LUCAS, YA-02, DAF
Clerk of the Court