UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant WILLIE L. HARVEY
United States Air Force

ACM S31395

12 September 2008

Sentence adjudged 19 September 2007 by SPCM convened at Eielson Air Force Base, Alaska. Military Judge: Charles E. Wiedie (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 months, and reduction to E-4.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Lance J. Wood.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, and Captain Megan E. Middleton.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of larceny of military property, in violation of Article 121, UCMJ, 10 U.S.C. § 921.[1] The approved sentence consists of a bad-conduct discharge, confinement for 2 months, and reduction to E-4.[2]

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[1] A charge of filing a false travel voucher was dismissed as multiplicious after arraignment.
[2] Reduction and mandatory forfeitures were deferred until action, and then mandatory forfeitures were waived.

The issue on appeal is whether a bad-conduct discharge is an excessively harsh approved sentence for filing a false travel voucher[3] when the appellant reimbursed the Air Force.[4]

Background

In August 2006, the appellant purchased tickets to fly his family to Mississippi in June 2007. In January 2007, he purchased tickets for him and his wife to take a cruise out of New Orleans while visiting in Mississippi in June 2007. In February 2007, the appellant's Consecutive Overseas Tour (COT) leave was approved. The appellant was granted permission to drive his family to ND for the COT leave. He and his wife also planned to go to the Mall of the Americas in MN.

In June 2007, the appellant and his family flew to Mississippi and he and his wife took their cruise. The appellant and his family did not go to MN or ND during this leave. Prior to his departure, the appellant told a neighbor that he and his family were driving to ND on their COT leave. In July 2007, the appellant filed a travel voucher claiming he and his family had driven to MN and back, entitling them to mileage and per diem.

Prior to the appellant's return, a neighbor noticed the appellant's car in the appellant's driveway. Another neighbor explained to her that he was picking the appellant's family up at the airport. The concerned neighbor confronted the appellant upon his return, and the appellant told her he and his family had driven to MN. The neighbor found this odd. She relayed the information to a co-worker on base who reported the appellant to law enforcement.

In August 2007, the appellant was questioned by Air Force Office of Special Investigations agents, and confessed to filing a false travel voucher. As a result of this fraudulent voucher, the appellant was overpaid $5902.58 by the government. In September 2007[5], the appellant paid back the entire amount owed to the government.

Discussion

We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Snelling,* 14 M.J. 267, 268 (C.M.A. 1982).

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[3] The appellant was convicted of larceny of $5902.58, military property.
[4] The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).
[5] This date occurred five days before preferral of the charges.

After a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the appellant's sentence of a bad-conduct discharge is not inappropriately severe. The appellant was convicted of stealing in excess of $5,900. He used this money for pleasure trips for his family. The appellant had served 13 years on active duty at the time of the offense. After he was caught, the appellant paid back the money he stole.

Conclusion

The findings and the 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). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

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