

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman First Class BRIAN J. HOWES  
United States Air Force**

**ACM S31809**

**17 August 2011**

Sentence adjudged 13 April 2010 by SPCM convened at Eglin Air Force Base, Florida. Military Judge: W. Thomas Cumbie (sitting alone).

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

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford and Captain Nathan A. White.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Charles G. Warren; Major Scott C. Jansen; and Gerald R. Bruce, Esquire.

Before

**BRAND, GREGORY, and WEISS  
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

A special court-martial composed of military judge alone convicted the appellant in accordance with his pleas of one specification of wrongfully using cocaine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The court sentenced him to a bad-conduct discharge, confinement for 75 days, and reduction to the grade of E-1. The convening authority approved the sentence adjudged. The appellant assigns as error that his sentence is inappropriately severe.<sup>1</sup>

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<sup>1</sup> This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (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. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we 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); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004), *aff'd in part and rev'd in part on other grounds*, 60 M.J. 368 (C.A.A.F. 2004).

The appellant entered active duty in 2006 and deployed to Iraq from July to November 2008. He admitted during the plea inquiry to using cocaine in July 2009. His service record contains several disciplinary actions including two punishments for alcohol-related incidents under Article 15, UCMJ, 10 U.S.C. § 815, and a letter of reprimand for an off-base driving under the influence of alcohol (DUI) charge. At the time of trial he was confined to the county jail for violating the probation conditions of his civilian DUI conviction. After his return from Iraq, the appellant showed symptoms of post-traumatic stress disorder (PTSD), and two health care providers opine that his alcohol and drug abuse were attempts to self-medicate. The appellant's alcohol problems, however, predate his deployment. A sanity board concluded that he was mentally responsible for his actions.

In arguing the inappropriateness of a bad-conduct discharge, the appellant cites the positive aspects of his service, his "downward spiral" after his return from deployment to Iraq, and the diagnosis of PTSD. While the matters cited by appellant are appropriate considerations in clemency, they do not show that his sentence is inappropriately severe. These matters were properly before the court-martial that sentenced him, as well as the convening authority that approved the sentence. Having considered the sentence de novo in light of the character of this offender, the nature and seriousness of his offense, and the entire record of trial, we find the appellant's sentence appropriate.

### *Conclusion*

We conclude that 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 the sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a faint horizontal line.

STEVEN LUCAS  
Clerk of the Court