

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman BRET E. JAMISON
United States Air Force**

ACM S31640

25 January 2010

Sentence adjudged 11 March 2009 by SPCM convened at Travis Air Force Base, California. Military Judge: Stephen R. Woody (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Major Bryan A. Bonner.

Appellate Counsel for the United States: Colonel Douglas P. Cordova and Lieutenant Colonel Jeremy S. Weber.

Before

**BRAND, JACKSON, and THOMPSON
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

Pursuant to his pleas, a military judge sitting as a special court-martial found the appellant guilty of one specification of wrongful distribution of oxycodone, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. His adjudged and approved sentence consists of a bad-conduct discharge, four months of confinement, and reduction to the grade of E-1.¹ On appeal, the appellant asks this Court to set aside his bad-conduct discharge. As the basis for his request, he opines that his sentence to a bad-conduct discharge is

¹ The appellant and the convening authority entered into a pretrial agreement wherein the appellant agreed to plead guilty to the charge and specification in return for the convening authority's promise to refer the charge and specification to a special court-martial.

inappropriately severe.² Finding no prejudicial error, we affirm the findings and the sentence.

Background

On 21 March 2008 and 8 April 2008, the appellant received a Percocet³ prescription for back pain. In mid-April 2008, the appellant agreed to sell some of his Percocet pills to Mr. RG, a gentleman living in another state whom the appellant had met several years earlier. On 16 April 2008, the appellant mailed Mr. RG 25 Percocet pills after Mr. RG sent the appellant an on-line money transfer of \$400, a portion of which was for the Percocet pills. On 17 April 2008, Mr. RG ingested two or three of the pills and died. At the time of Mr. RG's death he had oxycodone and several other drugs in his system. A forensic toxicologist listed drug "overdose" as the cause of Mr. RG's death.

Inappropriately Severe Sentence

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 offense, 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).

The appellant, by his actions, has seriously undermined his status as a military member. His offense is all the more aggravated by the fact that he chose to distribute drugs across state lines and, in doing so, contributed to the death of an individual. Additionally, the appellant's past disciplinary history, one which includes two letters of reprimand and a letter of counseling, evinces a disdain for authority and poor rehabilitative potential. After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offense of which he was found guilty, we do not find that the appellant's sentence, one which includes a bad-conduct discharge, is 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

² This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

³ The Percocet prescription contained oxycodone.

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



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal and extends to the right.

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