UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman TODD W. JONES
United States Air Force

ACM 36028 (f rev)

19 September 2006

Sentence adjudged 4 May 2004 by GCM convened at Eglin Air Force Base, Florida. Military Judge: Linda S. Murnane and Lance B. Sigmon (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 42 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Sandra K. Whittington.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Heather L. Mazzeno, and Captain Jefferson E. McBride.

Before

ORR, MATHEWS, and THOMPSON
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before us once again upon further review following our remand to the convening authority for a new action and promulgating order. *United States v. Jones*, ACM 36028 (A.F. Ct. Crim. App. 31 Jan 2006) (unpub. op.). Our subsequent opinion, dated 26 May 2006, is withdrawn.

The appellant alleges, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), that the counsel he received from his trial defense team was ineffective. Specifically, he alleges his lawyers did not inform him he would be

required to register as a convicted sex offender and have to submit a DNA sample to government officials. The appellant contends that he would not have pled guilty if he had been aware of these requirements.

Counsel are presumed to be competent, and the appellant bears the burden of overcoming this presumption. *Strickland v. Washington*, 466 U.S. 668, 689 (1984). To do so, the appellant must establish first that his assertions of fact are true. *United States v. Polk*, 32 M.J. 150, 153 (C.M.A. 1991). We note that the appellant has not submitted evidence, in the form of an affidavit or otherwise, establishing the truth of his central claim that he was not informed he would have to register as a sex offender. The evidence suggests that the opposite is true: the appellant pled guilty to and was convicted of rape and forcible sodomy. During trial, his defense counsel specifically referenced the fact that the appellant would be required to register as a sex offender in order to argue against a punitive discharge. The appellant's contention that he was unaware he would be required to register simply is not credible.

Even if the appellant's claim was worthy of belief, we would still resolve his assignment of error adversely. As our superior appellate court recently held in *United States v. Miller*, 63 M.J. 452 (C.A.A.F. 2006), failure to advise an accused that he will be subject to sex offender registration requirements does not in itself amount to ineffective assistance of counsel. Considering the record in its entirety, we find the appellant was competently represented.

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 sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator