UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant CHARLES D. KEEN
United States Air Force

ACM 37148

26 November 2008

Sentence adjudged 08 November 2007 by GCM convened at Malmstrom Air Force Base, Montana. Military Judge: Charles E. Wiedie.

Approved sentence: Bad-conduct discharge, confinement for 8 months, $2,500.00 fine, and reduction to E-4.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Coretta E. Gray.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of conspiracy to commit larceny, one specification of making false official statements, and one specification of larceny in excess of $500.00, in violation of Articles 81, 107 and 121, UCMJ, 10 U.S.C. §§ 881, 907, 921.

The panel of officers sentenced the appellant to a bad-conduct discharge, confinement for eight months, reduction to E-4, and a fine of $2,500.00. The convening authority approved the findings and sentence.[1] On appeal the appellant avers his sentence

---

[1] The convening authority deferred and then waived mandatory forfeitures.

is inappropriately severe and/or highly disparate in light of closely related cases. Finding no error, we affirm.

Background

At the time of trial, the appellant who was assigned as the Noncommissioned Officer-In-Charge of Supply at the Red Horse Squadron (RHS) had served 18 years 11 months on active duty. The appellant was the RHS approving official for government credit card (GPC) holders. Staff Sergeant (SSgt) C was a GPC holder within the RHS. In January 2005, the appellant and SSgt C devised a scheme to purchase items from an outdoor sporting goods store with the GPC.

The appellant would contact SSgt C and provide him with a list of hunting and fishing equipment he wanted purchased. SSgt C would purchase the equipment[2] with his GPC, have it sent to his office, and then call the appellant and tell him when the equipment arrived. The appellant would retrieve the equipment and take it home. Further, the appellant, as the approving official, would certify SSgt C's purchases as valid and "required to fulfill mission requirements." On two occasions, once each in January 2005 and August 2005, the appellant received the unauthorized equipment, which totaled more than $2,000.00. SSgt C obtained unauthorized merchandise exceeding $3,000.00.

In September 2005, the Air Force Office of Special Investigations became aware of the unauthorized purchases by SSgt C and opened an investigation. Thereafter, while deployed to Iraq, the appellant became a suspect.[3]

SSgt C was court-martialed in July 2007. He pled guilty to basically the same charges, although he was not the GPC approving authority. He was sentenced by members to confinement for one year,[4] reduction to E-1, forfeitures of $1,301.00 pay per month for two months, and a reprimand.

Inappropriately Severe Sentence

The appellant asserts that the portion of his sentence including a bad-conduct discharge is inappropriately severe in light of the sentences received by others in closely related cases. This Court reviews 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).

---

[2] Staff Sergeant C also purchased merchandise for himself.
[3] The appellant was deployed from October 2005 until May 2006.
[4] The convening authority approved ten months confinement, reduction to E-1, and a reprimand.

Although 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). Moreover, while we are required to examine sentence disparities in closely related cases, we are not required to do so in other cases. *United States v. Christian*, 63 M.J. 714, 717 (A.F. Ct. Crim. App. 2006) (citing *United States v. Wacha*, 55 M.J. 266, 267-68 (C.A.A.F. 2001)), *aff'd*, 66 M.J. 291 (C.A.A.F. 2008).

Closely related cases include those which pertain to "coactors involved in a common crime, servicemembers involved in a common or parallel scheme, or some other direct nexus between the servicemembers whose sentences are sought to be compared." *Lacy*, 50 M.J. at 288. "At [this Court], an appellant bears the burden of demonstrating that any cited cases are 'closely related' to his or her case and that the sentences are 'highly disparate.' If the appellant meets that burden . . . then the [g]overnment must show that there is a rational basis for the disparity." *Id.*

The appellant avers that not only is his case closely related to SSgt C's but also to Technical Sergeant (TSgt) P's. TSgt P was charged with conspiring with SSgt C to commit larceny and larceny. His sentence, which was adjudged by officers on 18 January 2007, included reduction to the grade of E-4, forfeiture of $1,000.00 pay per month for two months, and 30 days hard labor without confinement.[5] While SSgt C was involved with the appellant, TSgt P was not. Without more, there is no way to know if TSgt P's case was "closely related." Thus only SSgt C's case is "closely related." The appellant has failed to meet the burden of demonstrating that TSgt P's case is "closely related."

Although SSgt C's case is closely related, there are obvious distinct differences between the two cases. The appellant was the senior ranking individual and foremost, he was the approving official of the GPC. Accordingly, we find that the appellant's sentence is not "highly disparate" to SSgt C's sentence, either in a "comparison of the relative numerical values of the sentences at issue" or in "consideration of the disparity in relation to the potential maximum punishment" of each.[6] *Id.* at 289.

We next consider whether the appellant's sentence was appropriate judged by individualized consideration of the appellant on the basis of the nature and seriousness of the offense and the character of the appellant. After carefully reviewing the entire record of trial, we find the appellant's approved sentence, including the bad-conduct discharge, appropriate.

---

[5] The convening authority approved the sentence except he limited the reduction in grade to E-5.

[6] The appellant was facing a maximum sentence of a dishonorable discharge, forfeiture of all pay and allowances, confinement for 15 years, and reduction to E-1.

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.

Judge JACKSON did not participate.

OFFICIAL

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