

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class BRANDY L. KETCHUM
United States Air Force**

ACM 35567

27 September 2005

Sentence adjudged 17 January 2003 by GCM convened at MacDill Air Force Base, Florida. Military Judge: Sharon A. Shaffer.

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Andrea M. Gormel, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Shannon J. Kennedy.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant was convicted, contrary to her pleas, of one specification of absence without leave, four specifications of wrongful use of marijuana, one specification of wrongful distribution of marijuana, and one specification of wrongful possession of marijuana, in violation of Articles 86 and 112a, UCMJ, 10 U.S.C. §§ 886, 912a. The appellant alleges that her trial defense counsel was ineffective in that he conceded her guilt as to use and distribution of marijuana.

Neither the appellant nor the government have sought to supplement the record with affidavits or other relevant documentation. Applying the factors set forth in *United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997), we conclude that we can resolve the assignment of error based on the record and on the appellant's filings.

The evidence that the appellant used marijuana was substantial—several eyewitnesses, a confession, and two separate positive urinalysis results. In addition, several witnesses testified as to her distribution of marijuana, which was corroborated to a certain extent by her confession. The trial defense counsel’s strategy in regards to the alleged distribution was that, insofar as several members were sharing marijuana on the occasions in question, they all exercised constructive possession of the drug. Therefore, the defense counsel argued, any such sharing under those circumstances would not rise to the level of distribution within the meaning of Article 112a, UCMJ, on the theory that one cannot distribute anything that the intended recipient already possesses. While this strategy was obviously unavailing, it was nevertheless ingenious and made in apparent good faith. Any concessions by trial defense counsel appear to have been made “for the purpose of retaining credibility with the members.”¹ *United States v. Hennis*, 40 M.J. 865, 868 (A.F.C.M.R. 1994) (citing *United States v. Hansen*, 36 M.J. 599, 611 (A.F.C.M.R. 1992)). We hold that the appellant has failed to meet her burden of proving ineffective assistance of counsel. See *United States v. Gibson*, 46 M.J. 77, 78 (C.A.A.F. 1997); *Strickland v. Washington*, 466 U.S. 668 (1984).

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.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

¹ The appellant was acquitted of one specification of wrongful introduction of marijuana onto an armed forces installation, the panel finding her guilty only of the lesser-included offense of wrongful possession. *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 37d(5)(a) (2002 ed.).