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

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**UNITED STATES**

**v.**

**Senior Airman MARCUS R. KING**
**United States Air Force**

**ACM 36039**

**27 February 2006**

Sentence adjudged 24 June 2004 by GCM convened at Luke Air Force Base, Arizona. Military Judge: Glenn L. Spitzer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 8 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Lieutenant Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major John N. Page III, and Major Maria A. Fried.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Nicole P. Wishart.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have reviewed the record of trial, the appellant's assignment of error, and the government's reply thereto. Finding no error, we affirm.

The appellant alleges his trial defense counsel was deficient in two respects: first, by failing to produce evidence to explain the appellant's mental health condition; and second, by telling the appellant to plead guilty as a means of minimizing his time in confinement.[1] We review such claims de novo; the appellant bears the burden of persuasion when challenging his counsel's performance. *United States v. Davis*, 60 M.J.

[1] This assignment of error was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

469, 473 (C.A.A.F. 2005); *United States v. Lee*, 52 M.J. 51, 52 (C.A.A.F. 1999). Initially, we look to see whether the appellant's allegations are true; and if so, whether there are reasonable explanations for counsel's tactics. *United States v. Polk*, 32 M.J. 150, 153 (C.M.A. 1991).

The record of trial does not support the appellant's claim that his counsel "failed to introduce evidence" regarding his mental health condition. The court-martial was informed, by both the appellant and his mother, that the appellant had been diagnosed with bipolar personality disorder.[2] Although trial defense counsel did not dwell on the appellant's mental health issues, we regard this as a reasonable strategy when dealing with two assaults on fellow servicemembers. Excessive focus on the appellant's diagnosis could easily paint an image of him as a person requiring lengthy rehabilitation in a setting isolated from the rest of society – in short, a person requiring substantial confinement. Trial defense counsel's obvious strategy of damage containment was by no means deficient. *See United States v. Stephenson*, 33 M.J. 79, 82 (C.M.A. 1991).

Likewise, we see nothing amiss in trial defense counsel's advice to the appellant to plead guilty. The appellant, through his counsel, successfully sought a pretrial plea agreement with the convening authority capping his confinement at 18 months – 5 years less than the maximum authorized for his offenses. As is customary in such deals, the appellant agreed to plead guilty to all charges and specifications. He does not allege before us that he was not in fact guilty, and we find nothing in the record to suggest that the appellant's pleas were improvident. We therefore see nothing inaccurate or otherwise deficient in his counsel's recommendation, nor is there any evidence that the appellant would have achieved a more favorable result had his counsel given different advice. *Cf. Polk*, 32 M.J. at 153.

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

ANGELA M. BRICE
Clerk of Court

[2] The appellant's testimony during his providency inquiry does not support any inference that the appellant was not fully responsible for his actions; in fact, he said, he "could . . . have avoided" his misconduct.