UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class GARRY E. KING
United States Air Force

ACM 37134

28 October 2008

Sentence adjudged 31 October 2007 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Le Zimmerman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Michael A. Burnat.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Matthew S. Ward, and Captain Megan E. Middleton.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

PER CURIAM:

Consistent with the appellant's pleas, a military judge sitting as a general court-martial convicted him of possession, distribution, and divers uses of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged sentence consists of a bad-conduct discharge, confinement for 10 months, and reduction to E-1. Consistent with a pretrial agreement, the convening authority approved the sentence as adjudged except for reducing the period of confinement to nine months. The appellant today asserts that his sentence is inappropriately severe.[*] We find to the contrary and affirm.

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[*] *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Sentence Appropriateness

The appellant asserts that a sentence consisting of a bad-conduct discharge and nine months of confinement is inappropriately severe in light of his acceptance of responsibility, his good duty performance as evidenced by his character letters, and the fact that he had no prior disciplinary record. We also note that in his clemency submission to the convening authority he mentions lesser sentences received by the two airmen he provided cocaine to in his on-base house.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382 (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. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007). We have a great deal of discretion in determining whether a particular sentence is appropriate, but 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); *Rangel*, 64 M.J. at 686.

On two separate occasions the appellant purchased cocaine that he used in his on-base quarters. On the second of these two occasions, he invited two other airmen over to his quarters and provided both of them with cocaine. Finally, when his home was searched, not only was cocaine found in three different locations in his home, but, significantly, one of those locations was the bedroom of his one-year-old daughter. Considering these offenses, and weighing the appellant's arguments and character evidence, we are satisfied that the sentence is not 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 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

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