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

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**UNITED STATES**

**v.**

**Technical Sergeant MARQUIS W. KNIGHT**
**United States Air Force**

**ACM 38083**

**5 March 2013**

Sentence adjudged 19 December 2011 by GCM convened at Moody Air Force Base, Georgia. Military Judge: W. Thomas Cumbie.

Approved sentence: Dishonorable discharge, confinement for 6 years, and reduction to E-1.

Appellate Counsel for the Appellant: Major Daniel E. Schoeni.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel C. Taylor Smith; Lieutenant Colonel Linell A. Letendre; Major Brian C. Mason; and Gerald R. Bruce, Esquire.

Before

GREGORY, HARNEY, and SOYBEL
Appellate Military Judges



PER CURIAM:

A general court-martial composed of officer members convicted the appellant in accordance with his pleas of aggravated sexual assault of a child under the age of 16 years, in violation of Article 120, UCMJ, 10 U.S.C. § 920. The court sentenced him to a dishonorable discharge, confinement for 10 years, forfeiture of all pay and allowances, and reduction to the grade of E-1. In accordance with a pretrial agreement, the convening authority approved the dishonorable discharge and reduction to E-1, but he approved only 6 years of the adjudged confinement. The appellant assigns two errors, both pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982): (1) the conditions of his post-trial confinement for 31 days in the county jail while awaiting

transfer to a military confinement facility constituted cruel and unusual punishment, in violation of Article 55, UCMJ, 10 U.S.C. § 855, and the Eighth Amendment,[*] and (2) his sentence is inappropriately severe because the trial counsel recommended eight years and the court adjudged ten. Finding no error prejudicial to the substantial rights of the appellant, we affirm.

*Confinement Conditions*

In a declaration submitted to this Court, the appellant states that he was segregated from other inmates while confined in the Cook County jail for 31 days after his trial, with the exception of an elderly cellmate. He states that he did not enjoy the same privileges as other inmates, was denied a proper bed, and was denied his anti-depressant medication. An affidavit from an official at the jail states that military inmates are segregated from the general population to prevent commingling with foreign nationals.

We review claims of cruel and unusual punishment de novo. *United States v. Lovett*, 63 M.J. 211, 215 (C.A.A.F. 2006). To prevail, the appellant must show:

> (1) an objectively, sufficiently serious act or omission resulting in the denial of necessities; (2) a culpable state of mind on the part of prison officials amounting to deliberate indifference to [the appellant]'s health and safety; *and* (3) that he "has exhausted the prisoner-grievance system . . . and . . . petitioned for relief under Article 138, UCMJ, 10 U.S.C. § 938.

*Id*. at 215 (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *United States v. Miller*, 46 M.J. 248, 250 (C.A.A.F. 1997)) (emphasis added) (citations omitted). Assuming without deciding that the conditions of his confinement are as he claimed, the appellant fails to satisfy his burden of showing a culpable state of mind on the part of prison officials amounting to deliberate indifference to the appellant's health and safety. The affidavit submitted by the appellant from the jail official shows that, rather than displaying a culpable state of mind, prison officials were complying with military legal requirements to avoid commingling with foreign nationals. Further, the appellant's declaration is insufficient to show that he exhausted administrative remedies available for addressing his concerns. Reviewing the issue de novo, we find that the appellant has failed to establish his Eighth Amendment claim.

*Sentence Severity*

The appellant also argues that the adjudged sentence of ten years of confinement is inappropriately severe because the trial counsel argued for only eight years; however, the adjudged confinement was not approved in its entirety because a pretrial agreement capped confinement at six years. We review the appropriateness of the approved

[*] U.S. CONST. amend. VIII.

sentence de novo. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, the appellant's service record, 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). Additionally, while 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). The appellant abused his position as legal guardian of an underaged girl to have sexual intercourse with her on several occasions. Upon consideration of the appellant's character, the nature and seriousness of his offenses, and the entire record of trial we find the sentence appropriate.

*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). Accordingly, the approved findings and sentence are

AFFIRMED.

FOR THE COURT

LAQUITTA J. SMITH
Appellate Paralegal Specialist