UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class LEE A. KNUEPPEL
United States Air Force

ACM S31645

27 May 2010

Sentence adjudged 27 March 2009 by SPCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Terry A. O'Brien (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, forfeiture of $933.00 pay per month for 9 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Michael A. Burnat, and Captain Nicholas W. McCue.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, Major Coretta E. Gray, and Gerald R. Bruce, Esquire.

Before

BRAND, HELGET, and GREGORY
Appellate Military Judges

PER CURIAM:

A special court-martial composed of military judge alone convicted the appellant pursuant to his pleas of multiple specifications involving illegal drugs: attempted possession of ecstasy (Schedule I); wrongful use of Percocet (Schedule II); wrongful use of cocaine; wrongful use of Lortab (Schedule III); wrongful use of Xanax (Schedule IV); and theft of hydrocodone, in violation of Articles 80, 112a, and 121, UCMJ, 10 U.S.C. §§ 880, 912a, 921. The convening authority approved the adjudged sentence of a bad-conduct discharge, confinement for nine months, forfeiture of $933 pay per month for nine months, and reduction to the lowest enlisted grade.

In his appeal to this Court the appellant asserts through his counsel that the military judge should have sua sponte recused herself[1] because, as she disclosed at trial, she has a family member who has problems with illegal drugs. We disagree and affirm.

Following the formal announcement of charges in a pretrial Article 39(a), UCMJ, 10 U.S.C. § 839(a), hearing the military judge disclosed that she has a family member who is an admitted drug addict with related legal and rehabilitation issues. She explained that she did not know the specific details of the legal problems, the scope of the addiction, or the nature of the rehabilitation. She concluded her disclosure with the following:

> My feelings for my family member will have no bearing on my ability to fairly and impartially participate in this court-martial, but I do want to put that on the record and give counsel the opportunity to ask me questions and challenge me if they desire.

Neither the trial counsel nor the trial defense counsel asked any questions or posed any challenges to the military judge, and the appellant thereafter elected a military judge alone forum. From this the appellant cobbles his argument that the military judge should have sua sponte recused herself, claiming among other things that her disclosure fell "woefully short" of full. This argument is completely without merit.

Over a year ago we addressed this identical issue, involving the same military judge and the same disclosure. *United States v. David*, ACM S31478 (A.F. Ct. Crim. App. 10 Feb 2009) (unpub. op.), *pet. denied*, No. 09-0522/AF (C.A.A.F. 24 Jun 2009).[2] Contrary to the appellant's claim, we find nothing in the military judge's candid disclosure in this case that shows either actual or implied bias. She specifically disclaimed any bias, and her conduct throughout the trial reveals none. We further find that a reasonable observer would not question the legality, fairness, and impartiality of the trial, particularly in light of the complete lack of any follow-up questions or challenges to the military judge at trial and the appellant's apparent confidence in her impartiality as shown by his election of a military judge alone forum following the disclosure. *See United States v. Foster*, 64 M.J. 331, 333 (C.A.A.F. 2007) (the law accords the military judge a strong presumption of impartiality, and failure to object at trial to alleged partisanship may show defense belief of impartiality). The military judge did not abuse her discretion in remaining on this case.

[1] The appellant's brief repeatedly refers to the military judge in the masculine gender; however, the record clearly shows that the military judge is a woman. See, for example, page 3 of the record of trial, where no less than three times the appellant referred to the military judge as "ma'am."

[2] In this previous case the issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

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