UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman SHELLEY R. KOLAR
United States Air Force

ACM 35540

31 August 2005

Sentence adjudged 15 November 2002 by GCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: R. Scott Howard.

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

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Captain David P. Bennett, and Captain Diane M. Paskey.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel David N. Cooper, and Major John C. Johnson.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the two assignments of error, and the government's response thereto. Finding no error, we affirm.

The appellant first contends that the evidence is legally and factually insufficient to sustain her conviction for aggravated assault. Legal sufficiency is a question of law this Court reviews de novo. *United States v. Tollinchi*, 54 M.J. 80, 82 (C.A.A.F. 2000). The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having

personally observed the witnesses, we are ourselves convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 324. We conclude that there is sufficient competent evidence in the record of trial to support the findings. The testimonies of the expert witness, the agents from the Air Force Office of Special Investigations, the victim's day care provider, and the victim's father in this case were credible and compelling, and we are convinced of the appellant's guilt beyond a reasonable doubt. *See Turner*, 25 M.J. at 325; Article 66(c), UCMJ, 10 U.S.C. § 866(c).

Second, the appellant asserts that her sentence is inappropriately severe.[1] This Court may only affirm those findings and sentence that we find are correct in law and fact and determine, based on the entire record of trial, should be affirmed. Article 66(c), UCMJ. In exercising this authority, we must ensure that justice is done and the appellant receives the punishment she deserves. Performing this function does not allow us to grant clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this duty is to give "individualized consideration" to an appellant on the basis of the nature and seriousness of the offense and the character of the appellant. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). After carefully considering the entire record, and applying this standard, we conclude the appellant received an appropriate sentence for the offense she was convicted of.

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