UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant IAN D. LANIER
United States Air Force

ACM S31344

19 March 2008

Sentence adjudged 10 July 2007 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Maura McGowan (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 10 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Coretta E. Gray.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

The appellant was tried at Lackland Air Force Base, Texas, by a military judge sitting as a special court-martial. In accordance with his pleas, the appellant was found guilty of larceny in violation of Article 121, UCMJ, 10 U.S.C. § 921. The military judge sentenced the appellant to a bad-conduct discharge, confinement for 10 months, and reduction to E-1. The convening authority approved the sentence as adjudged.

On appeal, the appellant contends that (1) he is entitled to new post-trial processing because the addendum to the staff judge advocate's recommendation was apparently erroneous; and (2) the sentence is inappropriately severe in light of the

appellant's outstanding military record.[1] We have examined the record of trial, the assignments of error, and the government's response. We find no merit in the assignments of error and affirm.

Post-Trial Processing

The convening authority in this case was provided a staff judge advocate's recommendation (SJAR) dated 23 July 2007, which was prepared by a civilian "attorney-advisor." The SJAR recommended, among other things, that the convening authority approve the sentence as adjudged. In an indorsement to the SJAR the acting staff judge advocate (SJA) concurred with the recommendations made by the attorney-advisor. In an addendum to the SJAR, also dated 23 July 2007, the attorney-advisor again recommended approval of the sentence, including "confinement for ten months." In an indorsement to the addendum, the acting SJA first stated that he concurred with the addendum but then recommended the convening authority "approve the findings and sentence of reduction to E-1, confinement for four months, reprimand, and a bad conduct discharge."

The acting SJA's indorsement to the addendum is erroneous, in that it recommends approval of a reprimand which was not adjudged. It is also confusing, in that it appears to recommend approval of confinement for only four months despite also stating that it concurs with the recommendations made in the addendum, including approval of confinement for ten months. The appellant asserts that new post-trial processing is required because the convening authority could not have known exactly what the SJA was recommending. On 14 December 2007 the government moved to submit documents in support of their answer to the assignment of error, and we granted the motion. Based on the record as it stands after the admission of those documents, we find no merit to the assignment of error and affirm.

The documents submitted included sworn affidavits from the acting SJA and the convening authority who took action in this case. The acting SJA states that the portion of his indorsement to the SJAR addendum referencing four months confinement and a reprimand was a clerical error. In his affidavit, the convening authority states he specifically remembered reviewing the SJAR as well as the addendum to the SJAR. He states he understood the advice from his SJA was "to approve the adjudged sentence of reduction to E-1, confinement for 10 months, and a bad conduct discharge." The convening authority states he agreed with the advice and determined the adjudged sentence was appropriate. Based on the documents submitted by the government, we conclude that the appellant has suffered no prejudice and is entitled to no relief.

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

Sentence Appropriateness

This Court has the authority to review sentences pursuant to Article 66(c), UCMJ, 10 U.S.C. § 866(c), and to reduce or modify sentences we find inappropriately severe. Generally, we make this determination in light of the character of the offender and the seriousness of his offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We may also take into account disparities between sentences adjudged for similar offenses. *United States v. Wacha*, 55 M.J. 266, 267 (C.A.A.F. 2001). Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise of clemency. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the crime of which the appellant was found guilty, we do not find the appellant's sentence inappropriately severe. *Snelling*, 14 M.J. at 268.

Conclusion

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

STEVEN LUCAS, GS-11, DAF
Clerk of the Court