UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class KENNETH C. LEE
United States Air Force

ACM S31523

07 April 2009

Sentence adjudged 19 June 2008 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Bryan D. Watson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 20 weeks, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Imelda L. Paredes, and Captain Marla J. Gillman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Jeremy S. Weber.

Before

WISE, BRAND, and HELGET
Appellate Military Judges

PER CURIAM:

Contrary to his pleas, the appellant was found guilty by a military judge sitting alone of one specification of wrongfully using cocaine on divers occasions and one specification of wrongfully using marijuana on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The approved sentence consists of a bad-conduct discharge, confinement for 20 weeks, and reduction to E-1.*

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* The adjudged sentence consisted of a bad-conduct discharge, confinement for seven months, and reduction to E-1. Pursuant to the terms of a pretrial agreement, the convening authority (CA) agreed to not approve confinement in excess of six months. Additionally, the CA granted the appellant's clemency request to only approve confinement for 20 weeks as the appellant's spouse was pregnant and scheduled to deliver their first child on 30 October 2008.

The issue on appeal, raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), is whether the appellant's sentence that included a bad-conduct discharge is inappropriately severe. We find the sentence is not inappropriately severe and affirm.

Background

On or about 1 April 2007, the appellant was approached by two other airmen, Airman (Amn) G and Amn H, to drive them to an off-base location in San Antonio, Texas, to buy some cocaine. When they arrived, Amn G purchased the cocaine and returned to the appellant's car. After the other two airmen used cocaine, they offered the appellant a line of cocaine, which he accepted. The appellant proceeded to snort one to two lines of cocaine.

Approximately two days later, Amn G and Amn H again asked the appellant for a ride to obtain cocaine. The appellant drove them to the same location as the first time. After Amn G purchased the cocaine, they all snorted the cocaine in the appellant's car.

A few days later, the appellant drove Amn G and another airman, Amn O, to an off-base location where they all used cocaine. Over a period of two weeks, the appellant similarly drove other airmen every couple of days to purchase cocaine and would use some of the cocaine on each occasion. In total, the appellant snorted approximately 20 lines of cocaine on seven occasions during the two-week period.

Sometime in March or April 2007, the appellant smoked marijuana at an off-base location in San Antonio. Additionally, on 16 December 2007, the appellant was driving a group of airmen around San Antonio when one of the airmen pulled out some marijuana and made a blunt by emptying tobacco from a cigar and replacing it with marijuana. Each person in the car, including the appellant, smoked the marijuana blunt.

Sentence is Inappropriately Severe

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the 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). 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).

The maximum punishment in this case was the jurisdictional limit for a special court-martial, which includes 12 months confinement and a bad-conduct discharge. The appellant's approved sentence was a bad-conduct discharge, confinement for 20 weeks, and reduction to E-1. Having given individualized consideration to this particular appellant, the nature of the offenses, the appellant's record of service, and all other matters in the record of trial, we hold that the approved 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; *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