

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class RODDRICUS B. LEWIS
United States Air Force**

ACM 35096

6 February 2003

Sentence adjudged 22 February 2002 by GCM convened at Kunsan Air Base, Republic of Korea. Military Judge: Bryan T. Wheeler (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 2 years, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Maria A. Fried.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Lieutenant Colonel David N. Cooper.

Before

BURD, ORR, W.E., and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

CONNELLY Judge:

The appellant was tried by general court-martial composed of a military judge sitting alone on 21-22 February 2002, at Kunsan Air Base, Republic of Korea. He was found guilty consistent with his pleas of rape, sodomy by force, and unlawful entry, in violation of Articles 120, 125, and 134, UCMJ, 10 U.S.C. §§ 920, 925, 934. His adjudged and approved sentence consists of a dishonorable discharge, confinement for two years, and reduction to E-1. His two assignments of error are that the military judge overstepped his impartial role when he established the foundation for a rebuttal government witness and that his sentence was inappropriately severe.

During sentencing, the appellant presented testimony from a captain and three sergeants as to appellant's good rehabilitative potential. In rebuttal, the government called the appellant's former first sergeant to testify that appellant had no rehabilitative potential. Trial counsel established that the first sergeant had observed the appellant on a daily basis and had discussed the appellant with his supervisors. An objection to a question about the first sergeant's opinion regarding appellant's rehabilitative potential was sustained for lack of foundation. The military judge then asked the first sergeant how long she knew the appellant, the frequency of her interactions with the appellant and whether she was familiar with his personal information file. Eight questions were asked by the military judge. The first sergeant was then permitted to give her opinion as to appellant's rehabilitative potential. The appellant contends the military judge overstepped his impartial role when he, rather than trial counsel, established the foundation necessary for the first sergeant's testimony as to the appellant's lack of rehabilitative potential.

"Article 46, UCMJ, 10 USC § 846, and Mil.R.Evid. 614, Manual for Courts-Martial, United States (1995 ed.), provide wide latitude to a military judge to ask questions of witnesses called by the parties." *United States v. Acosta*, 49 M.J. 14, 17 (1998). However, "a military judge must not become an advocate for a party but must vigilantly remain impartial during the trial." *United States v. Ramos*, 42 M.J. 392, 396 (1995). The standard of review concerning a judge's questioning is whether, "'taken as a whole in the context of this trial,' a court-martial's 'legality, fairness, and impartiality' were put into doubt by the military judge's questions." *Id.* (quoting *United States v. Reynolds*, 24 M.J. 261, 265 (C.M.A. 1987)). The test is objective, judged from the standpoint of a reasonable person observing the proceedings. *Id.*

It is not uncommon that a first sergeant is called to testify at sentencing. The duties of a first sergeant necessarily entail that he or she know the service members assigned to the first sergeant's unit. Prior to the military judge's questions, the trial counsel had already established that the witness was the appellant's former first sergeant, that she had seen the appellant daily and that she had spoken with the appellant's supervisors concerning the appellant. It thus appeared that the witness had the necessary background to give an opinion concerning rehabilitative potential. The military judge merely asked how long the first sergeant had known the appellant, how often they interacted (a question previously asked by trial counsel and answered by the witness), and whether the first sergeant had knowledge of appellant's personal information file. The military judge's questions clarified the record as to the witness' knowledge of the appellant. This is a proper function of a military judge. The questions asked did not call into doubt the military judge's fairness or impartiality. The military judge remained impartial.

The appellant submits that his sentence is inappropriately severe. We disagree. This Court "may affirm only such findings of guilty and the sentence or such part or

amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved.” Article 66(c), UCMJ, 10 U.S.C. § 866(c). In order to determine the appropriateness of the sentence, this Court must consider 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 (C.M.A. 1982).

The appellant forcibly sodomized and raped a fellow airman while she laid in an alcohol-induced sleep in her dorm room. While the Court does not doubt the genuineness of the appellant’s remorse, we cannot disregard the severity of the criminal conduct. The approved sentence is not inappropriately severe. *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

The approved findings and sentence are correct in law and fact and no error prejudicial to the substantial rights of the appellant occurred. Art. 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37 (2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator