UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman SHANE W. LEWIS
United States Air Force

ACM S31400

15 December 2008

Sentence adjudged 12 September 2007 by SPCM convened at Dover Air Force Base, Delaware. Military Judge: Stephen R. Woody.

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, and Major Lance J. Wood.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, Major Donna S. Rueppell, Captain Ryan N. Hoback, and Captain Roberto Ramirez.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

PER CURIAM:

Consistent with the appellant's pleas, a military judge convicted him of one instance of failure to go, two uses of cocaine, and one use of heroin, in violation of Articles 86 and 112a, UCMJ, 10 U.S.C. §§ 886, 912a, respectively. A panel of officers sentenced him to a bad-conduct discharge, confinement for six months, and reduction to E-1. The convening authority approved the sentence. The appellant asserts that his sentence is inappropriately severe.[1] In addition, we specified an issue related to the lack of an Addendum to the Staff Judge Advocate's Recommendation (SJAR). Upon

[1] The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J.431 (C.M.A. 1982).

consideration of the briefs from both parties and post-trial affidavits, we find no error and affirm.

Missing Addendum to the SJAR

Upon our review of the case, we noted the lack of an Addendum to the SJAR in the record of trial. Without the Addendum to the SJAR or other confirming documentation, it was impossible to determine whether the convening authority had actually considered the appellant's clemency submissions prior to action. We therefore specified the issue of whether the appellant's post-trial rights were violated by the lack of any evidence that the convening authority considered submissions by the appellant and his counsel prior to taking action in the case, as is required by Rule for Courts-Martial (R.C.M.) 1107(b)(3)(A)(iii). In response to our specified issue, the appellee submitted affidavits from both the convening authority and the Staff Judge Advocate (SJA), confirming that the convening authority considered the appellant's clemency submission prior to taking action.

We review post-trial processing issues de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)). Prior to taking final action in this case, the convening authority was required to consider clemency matters submitted by the appellant. *United States v. Craig*, 28 M.J. 321, 324-25 (C.M.A. 1989); R.C.M. 1107(b)(3)(A)(iii). The preferred method of documenting a convening authority's review of clemency submissions is completion of an appropriate Addendum to the SJAR. *United States v. Godreau*, 31 M.J. 809, 811 (A.F.C.M.R. 1990).

In this case, the SJA did not prepare an Addendum to the SJAR. In *Godreau*, we held that two conditions must be met to comply with *Craig* when an appellant has properly submitted clemency matters, but no Addendum to the SJAR is prepared. *Id.* at 811-12. First, the convening authority must be advised in the post-trial recommendation that he is required to consider all matters submitted by the accused. *Id.* Second, there must be some means to determine that all matters submitted by the appellant were in fact considered by the convening authority. *Id.* at 812. The method approved in *Godreau* requires the convening authority to initial and date each item submitted by the appellant and his counsel. *Id.* Failing this, the convening authority is required to submit an affidavit verifying that he actually considered the appellant's submissions. *Id.* Having submitted such an affidavit, we are satisfied that the convening authority did, in fact, consider the appellant's clemency submissions prior to taking action.

Sentence Appropriateness

The appellant asserts that a sentence consisting of a bad-conduct discharge is inappropriately severe in light of three primary considerations. First, he points to his full

admission and acceptance of guilt. Second, he argues that his drug usage was as a result of depression and a legitimate attempt to commit suicide. Finally, he points to the character letters from his supervisors and his drug counselor to demonstrate his rehabilitation potential.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We have a great deal of discretion in determining whether a particular sentence is appropriate, but we 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).

If the appellant's sentence was based solely on the one time heroin and cocaine usage in his suicide attempt, we would agree with this assignment of error. However, his complete disciplinary record, his failure to take advantage of the help he was provided prior to using the cocaine and heroin, and his decision to use cocaine again, in the face of a pending court-martial, all formed the basis of the punishment imposed. As early as two months prior to his first use of cocaine and heroin, the appellant was involved in a serious alcohol incident. Despite being referred to counselors, he failed to take advantage of the resources and continued to abuse both alcohol and drugs. The most significant of these failures was his cocaine use, in his dorm room, two months *after* the attempted suicide incident. Considering his entire disciplinary record and the efforts made to provide the appellant the help he needed after his earlier disciplinary offense, we are satisfied that the sentence imposed is appropriate.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.[2] Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

[2] We note that Specifications 1, 2, and 3 of Charge I in the Court-Martial Order (CMO), dated 7 November 2007, erroneously include the phrase "within the continental United States" instead of the phrase "at or near Dover Air Force Base, Delaware," as stated on the charge sheet. We order the promulgation of a corrected CMO.

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court