

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic AJA C. LLOYD
United States Air Force**

ACM S30538

31 May 2005

Sentence adjudged 15 April 2003 by SPCM convened at RAF Lakenheath, United Kingdom. Military Judge: Linda S. Murnane.

Approved sentence: Bad-conduct discharge and confinement for 75 days.

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

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major John C. Johnson.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

MOODY, Judge:

The appellant was convicted, contrary to her pleas, of one specification of false official statement, one specification of wrongful use of ecstasy, and one specification of wrongful use of marijuana, in violation of Articles 107 and 112a, UCMJ, 10 U.S.C. §§ 907, 912a. The special court-martial, consisting of officer members, sentenced the appellant to a bad-conduct discharge and confinement for 75 days. The convening authority approved the sentence adjudged.

The appellant has submitted two assignments of error: (1) The finding of guilty as to the use of marijuana is ambiguous in that it is contrary to *United States v. Walters*, 58

M.J. 391 (C.A.A.F. 2003); and (2) The convictions for use of marijuana and ecstasy are neither legally nor factually sufficient. Finding error, we order corrective action.

Specification 2 of Charge II alleged use of marijuana on divers occasions, between on or about 1 February 2002 and on or about 30 April 2002. The panel found the appellant guilty of this specification, except the words “on divers occasions.” However, the panel did not specify which of the alleged instances of such use they had found beyond a reasonable doubt. Consistent with *Walters* and *United States v. Seider*, 60 M.J. 36 (C.A.A.F. 2004), we are unable as a matter of law to perform our factual sufficiency review in accordance with Article 66(c), UCMJ, 10 U.S.C. § 866(c). Therefore, Specification 2 of Charge II is dismissed.

In light of the discussion above, our consideration of the appellant’s second assignment of error is limited to reviewing the legal and factual sufficiency of her conviction for wrongful use of ecstasy. We conclude that a rational trier of fact, when viewing the evidence in the light most favorable to the government, could have found the appellant guilty of all elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Furthermore, after weighing the evidence and making allowances for not having personally observed the witnesses, this Court is convinced of the appellant’s guilt beyond a reasonable doubt. *Reed*, 54 M.J. at 41 (citing *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)).

Having dismissed Specification 2 of Charge II, we must now reassess the sentence. In *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002), our superior court summarized the required analysis:

In *United States v. Sales*, 22 MJ 305 (CMA 1986), this Court set out the rules for sentence reassessment by a Court of Criminal Appeals. If the court can determine that, absent the error, the sentence would have been at least of a certain magnitude, then it may cure the error by reassessing the sentence instead of ordering a sentence rehearing. *Id.* at 307. A sentence of that magnitude or less “will be free of the prejudicial effects of error.” *Id.* at 308.

Considering all matters properly before this Court, we conclude that, had the appellant been convicted only of the false official statement and use of ecstasy offenses, the panel would have sentenced her to no less than a bad-conduct discharge and confinement for 45 days.

The approved findings, as modified, and the sentence, as reassessed, are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *Reed*, 54 M.J. at 41. Accordingly, the approved findings, as modified, and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court