UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Master Sergeant JAMES W. LOCKWOOD
United States Air Force

ACM 35935

21 November 2005

Sentence adjudged 25 March 2004 by GCM convened at Schriever Air Force Base, Colorado. Military Judge: Kurt D. Schuman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 45 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, and Captain John N. Page III.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Stacey J. Vetter.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's reply thereto. Finding no error, we affirm.

We address the appellant's claim, raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), that he was denied effective assistance of counsel. The appellant alleges that his trial defense team, consisting of a civilian attorney with many years of military justice experience and an active-duty judge advocate assigned to the appellant's base, was ineffective because they did not advise the appellant of his "right to seek a pretrial plea agreement." Leaving aside the question of whether such a "right" exists, we hold that the appellant has not met his burden.

Claims of ineffective assistance of counsel are reviewed de novo. *United States v. Grigoruk*, 56 M.J. 304, 306 (C.A.A.F. 2002). In assessing the performance of trial defense counsel, we consider three factors: (1) Are the allegations made by the appellant true; and, if they are true, is there a reasonable explanation for counsel's actions; (2) Did counsel's performance fall measurably below the performance ordinarily expected of lawyers; and (3) If counsel was ineffective, is there a reasonable probability that, absent the errors, there would have been a more favorable result? *United States v. Polk*, 32 M.J. 150, 153 (C.M.A. 1991). *See also United States v. Saintaude*, 61 M.J. 175, 182 (C.A.A.F. 2005), *cert. denied*, 74 U.S.L.W. 3273 (31 Oct 2005).

Even were we to assume the appellant had satisfied the first two prongs, we see nothing in the record or in the appellant's submission to indicate that he would have obtained a better result. The appellant made a full confession; incriminating evidence was found in a search of his home and was voluntarily surrendered by him in the course of his criminal conduct. There is no reason to believe that he would have been able to obtain a pretrial agreement because he had little to offer in exchange. There were no uncooperative witnesses or evidentiary issues that might have been resolved by making a deal. Even if the appellant *had* persuaded the convening authority to enter into a bargain, there is no evidence to suggest that the convening authority would have agreed to a sentence limit less than the sentence adjudged at trial. Without such evidence, the appellant's claim fails. *See Grigoruk*, 56 M.J. at 307.

We have considered the remaining assignments of error and resolve them adversely to the appellant. The offenses were not multiplicious, and the appellant's unconditional guilty plea waived any further review on this issue. *See United States v. Pauling*, 60 M.J. 91, 94 (C.A.A.F. 2004); *United States v. Hudson*, 59 M.J. 357, 359 (C.A.A.F. 2004). We see no indication of any unreasonable multiplication of charges; as the trial counsel observed, it would have been a simple matter for the government to have charged each offense separately. The aggregation of the offenses into a small number of specifications alleging misconduct on divers occasions is strongly indicative of an absence of intent to unreasonably multiply the appellant's sentence exposure. *See United States v. Quiroz*, 55 M.J. 334, 338-39 (C.A.A.F. 2001). Finally, we conclude that the appellant's sentence was not inappropriately severe. *See United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The findings and sentence are correct in law and fact, the sentence is appropriate, and no error prejudicial to the substantial rights of the appellant was committed. 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 approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court