

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant ADAM R. LOPEZ
United States Air Force

ACM 35820

1 August 2005

Sentence adjudged 24 October 2003 by GCM convened at Francis E. Warren Air Force Base, Wyoming. Military Judge: Steven B. Thompson.

Approved sentence: Dishonorable discharge, confinement for 30 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Clayton O'Connor (legal intern).

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

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

The appellant first contends that the evidence is legally and factually insufficient to sustain his conviction for rape, adultery, and indecent assault. Legal sufficiency is a question of law the Court reviews de novo. *United States v. Tollinchi*, 54 M.J. 80, 82 (C.A.A.F. 2000). The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *United States v. Quintanilla*, 56 M.J. 37 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having

personally observed the witnesses, we are ourselves convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 324 (citing *Jackson v. Virginia*, 443 U.S. at 319). We conclude that there is sufficient competent evidence in the record of trial to support the court's findings. The victim's testimony in this case was credible and compelling, and we are convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325; Article 66(c), UCMJ, 10 U.S.C. § 866(c).

Second, the appellant asserts that his sentence is inappropriately severe. This Court may only affirm those findings and sentence that we find are correct in law and fact and determine, based on the entire record of trial, should be affirmed. Article 66(c), UCMJ. In exercising our authority under Article 66(c), UCMJ, we must ensure that justice is done and the appellant receives the punishment he deserves. Performing this function does not allow us to grant clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this duty is to give individualized consideration to an appellant on the basis of the nature and seriousness of the offense and the character of the appellant. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). After carefully considering the entire record, and applying this standard, we conclude that the appellant received an appropriate sentence for his crimes.

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

ANGELA M. BRICE
Clerk of Court