UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class SHARI C. LOVING
United States Air Force

ACM S30450

25 April 2005

Sentence adjudged 13 August 2003 by SPCM convened at Laughlin Air Force Base, Texas. Military Judge: Patrick M. Rosenow (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 120 days, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Bryan A. Bonner, and Major Andrea M. Gormel.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Michelle M. Lindo.

Before

ORR, MOODY, and CONNELLY
Appellate Military Judges

CONNELLY, Judge:

The appellant pled guilty to one specification of attempted larceny and three specifications of larceny, in violation of Articles 80 and 121, 10 U.S.C. §§ 880, 921. A military judge sitting as a special court-martial accepted the appellant's pleas and sentenced her to a bad-conduct discharge, confinement for 120 days, and reduction to E-1. The convening authority approved the adjudged sentence, but waived the mandatory forfeitures of two-thirds pay for a period of 120 days or release from confinement, whichever was sooner, for the benefit of the appellant's child. On appeal, the appellant alleges her sentence is inappropriately severe and the staff judge advocate's recommendation (SJAR) is improper because it failed to address a matter raised by the

trial defense counsel in his clemency submissions. Finding no prejudicial error, we affirm.

Sentence appropriateness should generally "be judged by 'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-181 (C.M.A. 1959)). The appellant's financial misconduct occurred over a two-month period and involved six separate acts of dishonesty or attempted dishonesty. Two fellow service members and the government were victimized by her conduct. We acknowledge the appellant's good military service, her pretrial rehabilitative efforts, and her difficult family situation. However, the appellant's misconduct and its impact are severe. The adjudged sentence balances both the seriousness of the appellant's misconduct and the matters presented in mitigation. The sentence is not inappropriately severe.

The appellant alleges the SJAR is improper because it failed to address a matter raised by the trial defense counsel. We conduct a de novo review to determine whether post-trial processing was properly completed. *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000). In reviewing claims of misleading or improper SJARs, there must not only be error, there must also be prejudice to the rights of the appellant. *United States v. Blodgett*, 20 M.J. 756, 758 (A.F.C.M.R. 1985); Article 59a, UCMJ, 10 U.S.C. § 859a. Determining prejudice requires a finding that the convening authority might have taken more favorable action, if provided accurate or more complete information. *United States v. Johnson*, 26 M.J. 686, 689 (A.C.M.R. 1988), *aff'd*, 28 M.J. 452 (C.M.A. 1989).

The staff judge advocate in his recommendation characterized the appellant's service as unsatisfactory. There was no explanation for the characterization. The trial defense counsel objected to this characterization in the clemency submission. This issue was not specifically addressed by the staff judge advocate in his addendum to the SJAR. The appellant submits this error was compounded by the omission from the appellant's personal data sheet of the appellant's three months of duty in the United Arab Emirates.

We find that the staff judge advocate's failure to comment on the trial defense counsel's objection to the characterization of the appellant's duty performance was erroneous. The staff judge advocate should have treated the defense's remark as an allegation of legal error and commented upon it as required by Rule for Courts-Martial 1106(d)(4). However, given the facts before us, we find no prejudice to the appellant.

The appellant's duty performance and her deployment were central themes in the clemency request. The staff judge advocate's failure to comment on the trial defense counsel's assertion of legal error did not deny the appellant an opportunity to provide input to the convening authority's decision, as the convening authority specifically acknowledged, in writing, before taking action on the findings and sentence that he

considered these matters. Nor did it prejudice the appellant's ability to obtain review and correction of trial errors by this Court. *See Blodgett*, 20 M.J. at 758. Thus, we are convinced that the appellant's plea for clemency was properly considered, and the appellant suffered no prejudice from these omissions. *See* Article 59a, UCMJ.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the appellant's substantial rights occurred. 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