UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class LOUIS J. MALLORY III
United States Air Force

ACM S30784

29 September 2005

Sentence adjudged 14 October 2004 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 130 days, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland, Major L. Martin Powell, and Captain Kimberly A. Quedensley.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Major Michelle M. McCluer, and Captain Jefferson E. McBride.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

The appellant was convicted by a special court-martial convened at Nellis Air Force Base (AFB), Nevada, in accordance with his pleas, of wrongfully using cocaine on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The military judge sentenced him to a bad-conduct discharge, confinement for 5 months, and reduction to E-1. The convening authority approved a sentence of a bad-conduct discharge, confinement for 130 days,[1] and reduction to E-1.

The appellant asked the military judge not to adjudge a bad-conduct discharge, and he asked the convening authority not to approve it. The appellant now asserts that his sentence is inappropriately severe,[2] again focusing on the inappropriateness and

[1] In accordance with the confinement limitation in the appellant's pretrial agreement with the convening authority.
[2] This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

adverse impact of a punitive discharge in his case. He supports his argument with excerpts from the Nellis AFB newspaper on the results of base disciplinary actions. Many of the excerpted cases are unhelpful because they concern nonjudicial punishment actions, not court-martial sentences, and do not involve cocaine use. The excerpts do include four court-martial cases involving cocaine where the sentence apparently did not include a bad-conduct discharge. The excerpts do not include any information about the underlying facts of the individual cases.

"Generally, sentence appropriateness should 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, 180-81 (C.M.A. 1959)). We have given individualized consideration to this particular appellant and the circumstances of his case and conclude his sentence is appropriate. *See* Article 66, UCMJ, 10 U.S.C. § 866; *United States v. Wacha*, 55 M.J. 266, 268 (C.A.A.F. 2001). The appellant's duty performance was good, including the period while the charges against him were pending (although he had been removed from his primary duties as an egress system apprentice). However, he admitted to using cocaine twice in the span of about 30 days, both times at parties with other Air Force members. He was nearly 24 years old when he committed the offenses. He did not offer any extenuating factors related to his drug use.

Sentence comparison is generally inappropriate, unless this Court finds that any cited cases are "closely related" to his case and the sentences are "highly disparate." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (citing *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985)). There is no basis to engage in sentence comparison in this case. The base newspaper excerpts provided by the appellant do not involve "coactors involved in a common crime, servicemembers involved in a common or parallel scheme, or some other direct nexus between the servicemembers whose sentences are sought to be compared." *Lacy*, 50 M.J. at 288.

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