UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JOSEPH I. MARUNIAK
United States Air Force

ACM S31919

22 August 2012

Sentence adjudged 7 March 2011 by SPCM convened at Beale Air Force Base, California. Military Judge: W. Shane Cohen (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 25 days, reduction to E-1, and a reprimand.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz and Captain Robert D. Stuart.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Major Lauren N. Didomenico; and Gerald R. Bruce, Esquire.

Before

ORR, GREGORY, and HARNEY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A special court-martial composed of military judge alone convicted the appellant in accordance with his plea of wrongful use of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a, and sentenced him to a bad-conduct discharge, confinement for 25 days, restriction for 30 days, reduction to the grade of E-1, and a reprimand. The convening authority approved the sentence adjudged, except for the restriction. The appellant assigns as error that (1) the court-martial lacked jurisdiction,

(2) the sentence is inappropriately severe, and (3) the Government illegally punished him prior to trial.[1]

Jurisdiction

We review jurisdictional questions de novo. *United States v. Davis*, 63 M.J. 171, 176 (C.A.A.F. 2006). Despite raising no objection at trial, the appellant now argues that the court-martial lacked jurisdiction because of "insufficient evidence" that the convening authority intended to refer the appellant's case to trial. Citing page 10.2 of the record, the appellant states in part that "[s]ection 14a of the charge sheet does not refer the case to a court-martial and is not signed." However, page 10.2 is an incomplete copy of the original, signed, two-sided charge sheet entered into the record at page 10.1. The back of the completed charge sheet states that the charge is "[r]eferred for trial to the Special court-martial board convened by Special Order AB-13" and is signed for the commander by the staff judge advocate. Special Order AB-13, 9th Reconnaissance Wing (ACC), is at page 1.1 and is also properly signed for the commander by the staff judge advocate.[2] The appellant's jurisdictional claim is without merit.

Pretrial Punishment

Following the appellant's unsworn statement that described his duties prior to trial, the military judge conducted a further inquiry into whether the appellant had been illegally punished prior to trial. Both the appellant and his counsel expressly denied that the appellant had been illegally punished prior to trial and the military judge agreed with their assessment. The record shows that the appellant expressly waived the issue at trial, and we find no plain error in the military judge's sua sponte determination that the conditions of pretrial confinement described by the appellant did not amount to illegal pretrial punishment in violation of Article 13, UCMJ, 10 U.S.C. § 813. *See United States v. Inong*, 58 M.J. 460 (C.A.A.F. 2003); *United States v. Starr*, 53 M.J. 380 (C.A.A.F. 2000).

Sentence Appropriateness

The appellant argues that his sentence is inappropriately severe and requests that we not affirm the approved bad conduct discharge. We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion

[1] The second and third assigned errors are raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).
[2] Contrary to the appellant's argument, a convening order need not identify a particular accused. *See* Rule for Courts-Martial 504(d)(1); Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 5.11 (21 December 2007).

in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). After carefully examining the submissions of counsel, the appellant's military record, and all the facts and circumstances surrounding the offenses of which he was convicted, we find the appellant's sentence appropriate.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.[3] 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 the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court

[3] The court-martial order (CMO) erroneously indicates that the appellant was convicted of wrongful use of methamphetamine "on divers occasions," but he was only charged with a single use. We order the promulgation of a corrected CMO.