UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ERIC R. MCADAMS
United States Air Force

ACM S30168

30 July 2004

Sentence adjudged 28 June 2002 by SPCM convened at Wright-Patterson Air Force Base, Ohio. Military Judge: Mary M. Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, forfeiture of $737.00 pay per month for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea , Major Kyle R. Jacobson, and Captain L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Captain Nurit Anderson, and Captain C. Taylor Smith.

Before

STONE, GENT, and MOODY
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The convening authority referred the appellant's charges to a special court-martial on 25 June 2002. On 28 June 2002, the appellant waived the three-day period between referral and trial and pled guilty to conspiracy to commit larceny of military property, distribution of a controlled substance (six specifications), possession of a controlled substance, and larceny of military property in violation of Articles 81, 112a, and 121, UCMJ, 10 U.S.C. §§ 881, 912a, 921. His sentence was a bad-conduct discharge, confinement for 12 months, forfeiture of $767.00 pay per month for 3 months, and reduction to E-1.

At trial, the appellant and his defense counsel agreed that the court was authorized to sentence him to 1 year of confinement. The appellant now argues, pursuant to *United States v. Grostefon*, 12 M.J. 431, 436 (C.M.A. 1982), that since the charges were preferred against him on 6 May 2002, the court-martial did not have authority to sentence him to confinement for more than 6 months. He also argues that since his sentence included confinement for more than 6 months, his sentence violated the *Ex Post Facto* Clause of the United States Constitution. We find these arguments without merit.

We hold the appellant waived this issue. Even in the absence of waiver, we hold that the President has authorized the implementation of legislation permitting special courts-martial convened after 15 May 2002 to adjudge a penalty including one year of confinement. Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, § 577, 113 Stat. 625 (as codified at 10 U.S.C. § 819) (5 Oct 1999) (noting that these amendments "shall take effect on the first day of the sixth month beginning after the date of the enactment of this Act and shall apply with respect to charges referred on or after that effective date to trial by special courts-martial."); Exec. Order No. 13262, 67 Fed. Reg. 18773, 18779 (11 Apr 2002). ("These amendments shall take effect on May 15, 2002"). *See Taylor v. Garaffa*, 57 M.J. 645 (N.M. Ct. Crim. App. 2002).

We also hold that the statute and executive order do not contravene the *Ex Post Facto* Clause of the Constitution. *Collins v. Youngblood*, 497 U.S. 37, 52 (1990) (changes in criminal procedures that do not make conduct criminal that was previously innocent, aggravate the criminality of the conduct, enhance the punishment, or alter the legal rules of evidence to the accused's disadvantage do not violate the *Ex Post Facto* Clause). *Taylor v. Garaffa*.

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, 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