UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman MATTHEW A. MCCRARY
United States Air Force

ACM S31476

04 December 2008

Sentence adjudged 11 March 2008 by SPCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Terry A. O'Brien (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of $893.00 pay per month for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Captain Timothy M. Cox, and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Jeremy S. Weber.

Before

WISE, BRAND, and HELGET
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

The appellant was tried at Seymour Johnson Air Force Base (AFB), North Carolina. In accordance with his pleas, he was found guilty of one specification of violating a lawful order, one specification of dereliction in the performance of duties, two specifications of making a false official statement, and one specification of wrongfully using cocaine, in violation of Articles 92, 107, and 112a, UCMJ, 10 U.S.C. § 892, 907, 912a. The approved sentence consists of a bad-conduct discharge, confinement for six months, forfeiture of $893 pay per month for six months, and reduction to E-1.

The issue on appeal, raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), is whether the appellant's sentence that included a bad-conduct discharge is inappropriately severe. We find the sentence is not inappropriately severe, and affirm.

Background

On 3 November 2007, the appellant was scheduled for duty at 2115. At approximately 2130, he contacted his supervisor, SSgt JW, and indicated he was at the airport in Raleigh, North Carolina, to pick up his uncle. He was told to report to work after he picked up his uncle. At approximately 0130 on 4 November 2008, the appellant called the security guard at Gate 1, Seymour Johnson AFB, to find out if a Be-On-The-Lookout (BOLO) had been issued for him. The gate guard asked why a BOLO would be issued and the appellant responded by saying he had not gone to work that evening. The gate guard inquired about his whereabouts, but the appellant refused to divulge his location. However, the appellant did admit that he had been drinking. The gate guard then notified the flight chief and a BOLO was issued for the appellant. Shortly after his conversation with the Gate 1 security guard, the appellant contacted a security guard at Gate 2, Seymour Johnson AFB, and indicated that he was scared and did not know what to do. The appellant then decided to turn himself in to the Wilson County, North Carolina, Sherriff's Office. An officer from Wilson County transported the appellant to the Wayne County, North Carolina, county line and a Wayne County officer then transported the appellant to Seymour Johnson AFB.

The appellant arrived at Seymour Johnson AFB at approx 0256 on 4 November 2007, and was immediately transported to the Law Enforcement Desk. Upon initial contact, security forces personnel smelled a strong odor of alcohol emitting from the appellant's breath and person, his eyes were bloodshot, and his speech was slurred. At 0730, SSgt JW drove the appellant to his residence. During the drive, the appellant admitted he lied about picking up his uncle at the airport, that he had been drinking all day at a friend's house in Wilson County, North Carolina,[*] and knew he was scheduled to work the previous evening.

On or about 17 November 2007, while at a party in Wilson County, North Carolina, some of the appellant's high school friends offered him cocaine. He snorted one line with a straw approximately the length of his index finger.

On 19 November 2007, at approximately 0900, the appellant was given an order by his commander, Capt JT, to report to the Drug Demand Reduction Office to provide a urine specimen for random drug inspection testing. The appellant never reported. Instead, at approximately 1030, he returned to the 4th Security Forces Squadron orderly

[*] During the *Care* inquiry, the appellant stated that he had consumed alcohol within eight hours of 2115 on 3 November 2008, the time he was scheduled to report to duty.

room with a signed indorsement, which appeared to be signed by the Drug Demand Reduction Office, indicating that he had reported for testing and provided a urine specimen. In fact, the indorsement had been signed by the appellant. At approximately 1300, the Drug Demand Reduction Office contacted the 4th Security Forces Squadron orderly room requesting an update on the status of the appellant who had not reported for testing.

On 20 November 2007, the appellant provided a urine specimen which tested positive for cocaine.

Sentence is Inappropriately Severe

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the 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). We have a great deal of discretion in determining whether a particular sentence is appropriate but 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).

The maximum punishment in this case was the jurisdictional limit for a special court-martial which includes 12 months confinement and a bad-conduct discharge. The appellant's approved sentence was a bad-conduct discharge, confinement for six months, forfeiture of $893.00 pay per month for six months, and reduction to E-1. Having given individualized consideration to this particular appellant, the nature of the offenses, the appellant's record of service, and all other matters in the record of trial, we hold that the approved sentence is not inappropriately severe.

Conclusion

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

STEVEN LUCAS, YA-02, DAF
Clerk of the Court