UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Master Sergeant CHARLES M. MCKITRICK
United States Air Force

ACM 36366 (f rev)

23 May 2007

Sentence adjudged 16 March 2005 by GCM convened at Bolling Air Force Base, District of Columbia. Military Judge: Kevin P. Koehler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major John N. Page III, and Major Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Major Matthew S. Ward, and Captain Jefferson E. McBride.

Before

BROWN, BECHTOLD, and BRAND
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court for further review because the original action was set aside. *United States v. McKitrick*, ACM 36366 (A.F. Ct. Crim. App. 13 June 2006) (unpub. op.). This Court returned the case to The Judge Advocate General for remand to the convening authority for new post-trial processing because the assistant trial counsel prepared and signed the addendum to the original staff judge advocate's recommendation

(SJAR). As assistant trial counsel, this officer was disqualified from acting as legal advisor to the convening authority on this case. *See* Rule for Courts-Martial 1112(c).

On 14 July 2006, a new SJAR was completed by the staff judge advocate (SJA) to the 11th Wing. The new SJAR was served on the appellant who responded on 28 July 2006 with a request for clemency, including supporting documents. The 11th Wing SJA issued an addendum on 2 August 2006. On 3 August 2006, the 11th Wing commander purported to issue a new action; however, subsequent to trial and prior to the remand, the general court-martial convening authority for the 11th Wing was transferred to the Air Force District of Washington (AFDW). Since the instant case was a general court-martial, post-trial processing was removed to the AFDW. On 7 August 2006, the AFDW SJA issued another SJAR. This SJAR included all the clemency material the appellant submitted to the 11th Wing commander in July 2006. The appellant and his counsel were properly served with a copy of this new SJAR and given the opportunity to respond. The appellant requested a personal appearance. His defense counsel requested clemency on his behalf. On 25 August 2006, the SJA issued an addendum to her 7 August 2006 SJAR. On 28 August 2006, the general court-martial convening authority issued General Court-Martial Order No. 155 approving the sentence as adjudged. On 27 February 2007, the convening authority issued a corrected order, General Court-Martial Order No. 97, which rescinded the previous order and again approved the sentence as adjudged.

This case initially came before this Court for further review with no additional assignments of error asserted. While review was pending, the appellant successfully moved to submit a supplemental assignment of error. Specifically, the appellant alleges that his sentence is inappropriately severe.[*]

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. Healy*, 26 M.J. 394 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

We reviewed the record of trial, the error assigned by the appellant pursuant to *United States v. Grostefon*, and the government's reply thereto. In determining the appropriateness of a sentence, this Court exercises its "highly discretionary" powers to assure that justice is done and the appellant receives the punishment he deserves. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). Performing this function does not authorize this Court to engage in the exercise of clemency. *Healy*, 26 M.J. at 395-96. The primary manner in which we discharge this responsibility is to give "individualized

[*] This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

consideration" to an appellant "on the basis of the nature and seriousness of the offense and the character of the offender." *Snelling*, 14 M.J. at 268 (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). After a careful review of the appellant's case, we hold that the appellant's sentence is not inappropriately severe.

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

MARTHA COBLE-BEACH, TSgt, USAF
Court Administrator