UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class BRYSON M. MILLER
United States Air Force

ACM 36842

7 November 2007

Sentence adjudged 11 January 2006 by GCM convened at Brooks City Base, Texas. Military Judge: Dixie A. Morrow (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 27 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Bryan A. Bonner, Captain John S. Fredland, and Captain Tiaundra D. Sorrell.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, and Captain Jason M. Kellhofer.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

PER CURIAM:

In accordance with his plea, the appellant was convicted of one specification of wrongful possession of child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Contrary to his pleas, he was convicted of making false official statements and wrongful distribution of child pornography, in violation Articles 107 and 134, UCMJ, 10 U.S.C. §§ 907, 934. His adjudged and approved sentence consists of a dishonorable discharge, confinement for 27 months, total forfeitures, and reduction to the grade of E-1.

The appellant asserts the portion of his sentence involving a dishonorable discharge is inappropriately severe in light of the offenses, and when comparing his

sentence to two totally unrelated cases with similar offenses. We have reviewed the record of trial, the assignment of error, and the government's answer thereto.

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). The power to review a case for sentence appropriateness, including relative uniformity, is vested in the Courts of Criminal Appeals. *Id.*; *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999). The general rule regarding sentence comparison is that courts-martial are not permitted to consider sentences in other cases when determining an appropriate sentence for the accused before them. *United States v. Barrier*, 61 M.J. 482, 485 (C.A.A.F. 2005). The rule has been applied to appellate review, where 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). The "military system must be prepared to accept some disparity in the sentencing of codefendants, provided each military accused is sentenced as an individual." *United States v. Durant*, 55 M.J. 258, 261 (C.A.A.F. 2001).

A recognized exception to the rule against sentence comparison for determining appropriateness is a situation involving connected or closely related cases with highly disparate sentences. *United States v. Barrazamartinez*, 58 M.J. 173, 176 (C.A.A.F. 2003); *United States v. Hawkins*, 37 M.J. 718, 722 (A.F.C.M.R. 1993); *United States v. Capps*, 1 M.J. 1184, 1187 (A.F.C.M.R. 1976). The comparison of the sentences is not limited to the sentences in question but may also be compared in relation to the maximum punishment. *Lacy*, 50 M. J. at 289. The appellant bears the burden of demonstrating that any cited cases are "closely related" to his case and that the sentences are "highly disparate." *Id.* at 288. The appellant has failed to meet this burden as to both prongs.

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. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004), *aff'd in part and rev'd in part on other grounds*, 60 M.J. 821 (C.A.A.F. 2004). After a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the appellant's sentence of a dishonorable discharge 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 findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of the Court