UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class RUSSELL A. MINK
United States Air Force

ACM 35639

27 June 2005

Sentence adjudged 4 April 2003 by GCM convened at Kunsan Air Base, Republic of Korea. Military Judge: David F. Brash (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 8 months, forfeiture of $600.00 pay per month for 8 months, and reduction to E-1.

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

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Heather L. Mazzeno.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of one specification of desertion terminated by apprehension in violation of Article 85, UCMJ, 10 U.S.C. § 885. The military judge, sitting alone as a general court-martial, sentenced the appellant to a dishonorable discharge, confinement for 8 months, forfeiture of $600.00 pay per month for 8 months, and reduction to E-1. The convening authority approved the findings and sentence as adjudged.

The appellant was stationed at Kunsan Air Base, South Korea, where he served as part of a three-person munitions load crew. He took authorized leave from 4 to 25 October 2002 to visit his fiancée and her son in the Philippines. At the conclusion of his authorized leave, the appellant decided to desert and not return to the Air Force. In an unsworn statement, the appellant said his desertion was motivated by frustration with the

way the Air Force had handled the paperwork he needed to marry his fiancée and adopt her son. He also said he wanted to stay with them to help support them. Philippine authorities apprehended the appellant, and he was returned to Air Force custody on 6 February 2003.

The appellant asks that we find his sentence inappropriately severe because it included a dishonorable discharge. This Court has the authority to review sentences pursuant to Article 66(c), UCMJ, 10 U.S.C. § 866(c), and to reduce or modify sentences we find inappropriately severe. Generally, we make this determination in light of the character of the offender and the seriousness of his offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We may also take into account disparities between sentences adjudged for similar offenses. *United States v. Wacha*, 55 M.J. 266, 267 (C.A.A.F. 2001).

In determining the appropriateness of his sentence, the appellant asks us to consider the cases of other servicemembers who committed offenses in addition to desertion, yet only received a bad-conduct discharge.[1] He also argues that his conduct, while not excusable, was at least understandable in light of his circumstances. Additionally, he notes that the evidence offered in aggravation was not substantial, especially as compared to the evidence in mitigation, which included his expression of remorse and the absence of any prior disciplinary history.

Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise of clemency. *Lacy*, 50 M.J. at 287; *United States v. Healy*, 26 M.J. 394 (C.M.A. 1986). Desertion is a serious crime, one that is unique to the military. *See* David A. Schlueter, *Military Criminal Justice: Practice and Procedure*, § 2-1 (6th ed. 2004) ("The uniqueness of the military criminal system is clearly evident in its proscription of conduct, or lack thereof, that may not find a counterpart in the civilian sector. Supporting this proscription is a deeply rooted argument that unchecked behavior may undermine discipline—an indispensable ingredient in the military's mission."). A sentence that includes a dishonorable discharge for desertion is not unheard of for an offense that strikes at the very heart of good order and discipline. A dishonorable discharge is within the range of uniformity for cases of this nature. While there was little evidence that the appellant's desertion was especially aggravated, we do not find the appellant's rationale for his conduct to be especially compelling. The appellant did not, for example, need to remain in the Philippines to take care of his fiancée and her child. Indeed, in his unsworn statement, the appellant said that shortly after he failed to return from leave, he realized how difficult it would have been to support his fiancée and her son without the benefit of his employment in the military.

[1] In comparing his sentence to that of similar cases, the appellant nonetheless concedes that these cases are not closely related. *See United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999).

Taking into account all the facts and circumstances, we do not find the appellant's sentence inappropriately severe. *Snelling*, 14 M.J. at 268.

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

ANGELA M. BRICE
Clerk of Court