UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant CURTIS T. MOBLEY
United States Air Force

ACM 36876

19 September 2007

Sentence adjudged 8 August 2006 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Joseph Tock (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Anniece Barber, and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Brendon K. Tukey.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

The appellant was charged with dereliction of duty, rape, and forcible sodomy, in violation of Articles 92, 120, and 125, UCMJ, 10 U.S.C. §§ 892, 920, 925. In accordance with his pleas, the appellant was found guilty of dereliction of duty and the lesser included offense of indecent assault, a violation of Article 134, UCMJ, 10 U.S.C. § 934. He was found not guilty of the greater offense of rape, which was not pursued by the government after the military judge accepted the appellant's pleas. The forcible sodomy charge and specification was dismissed after arraignment. The military judge, sitting alone as a general court-martial, sentenced the appellant to a bad-conduct discharge,

confinement for 18 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. The convening authority approved the findings and sentence as adjudged.

The appellant asserts two assignments of error on appeal. First, he asks that we find his plea of guilty to indecent assault improvident. Second, he argues that his sentence is inappropriately severe.[1] We find both assertions of error to be without merit, and affirm his conviction and sentence.

Improvident Plea

In urging us to find his plea of guilty to indecent assault improvident, the appellant focuses on two elements of the offense: that the act was done with unlawful force or violence, and that the acts were done without the lawful consent of the victim.

We will not set aside a guilty plea on appeal unless there is "a 'substantial basis' in law and fact for questioning the guilty plea." *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion. *United States v. Gallegos*, 41 M.J. 446 (C.A.A.F. 1995), *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). *See generally* 2 Steven A. Childress & Martha S. Davis, *Federal Standards of Review*, § 8.03 (2d ed. 1992) ("trial court's finding" that there is "an adequate factual basis" to accept a guilty plea is reviewed "under an abuse of discretion standard").

We have carefully reviewed the appellant's statements in the providence inquiry conducted by the military judge pursuant to *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969) as well as the stipulation of fact. Taken together, they provided the military judge with ample evidence that the appellant understood and admitted to all the elements of the crime to which he was pleading guilty. Further, the appellant made no statements that raised a substantial conflict with his guilty plea. We hold that the military judge did not abuse his discretion in accepting the appellant's plea of guilty to indecent assault.

Sentence Appropriateness

The appellant next asks that we find his sentence inappropriately severe. 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). Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise of clemency. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F.

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

1999); *United States v. Healy*, 26 M.J. 394 (C.M.A. 1988). Appellant's assertion of error urges us to find his sentence is inappropriately severe in light of the "circumstances surrounding the offenses . . . and many mitigating circumstances." While significant mitigating factors are present, the "circumstances surrounding the offenses" were extremely aggravating. The evidence supporting the dereliction of duty specification showed that the appellant, a 29-year-old noncommissioned officer, was a First Term Airman Center (FTAC) Team Leader. When he assumed that position, he was personally briefed by the Noncommissioned Officer in Charge of the FTAC on his responsibility to maintain professional relationships with all of the FTAC students. This briefing specifically informed the appellant that FTAC staff members were not to engage in social relationships nor engage in sexual activity with students. Nevertheless, when 18-year-old Airman Basic FML arrived on base and entered the FTAC program, the appellant asked for her phone number, invited her into his home, and began a sexual relationship with her. The two broke off the relationship a few weeks later.

Nearly two years after that, the appellant hosted his own birthday party at the Carolina Skies Club on base. The party provided free alcohol for females. FML, now an Airman First Class (A1C) but still under the legal drinking age, attended the party and became intoxicated. She and the appellant began flirting and, around midnight, the couple walked to a secluded, but still public, area of the club. The appellant leaned A1C FML over a counter top and pulled down her pants. She began throwing up and told the appellant to stop what he was doing. The appellant stopped his activities until A1C FML was done vomiting, and then rubbed his penis between her legs until he ejaculated. During the course of the activities, a civilian employee of the club walked by them twice, observed their actions, and asked them to stop. The employee then alerted the club manager. After the appellant ejaculated, he drove A1C FML back to her dorm, deposited her with a friend, and told the friend not to tell anyone that he had been with her. A1C FML, at that point incoherent, spent the rest of the night vomiting and urinating on herself. Taking into account all the facts and circumstances, as the appellant invited us to do, we do not find the appellant's sentence inappropriately severe. *Snelling*, 14 M.J. at 268. To the contrary, after reviewing the entire record, we find that the sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.AF. 2005); *Healy*, 26 M.J. at 395.

Conclusion

The 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.

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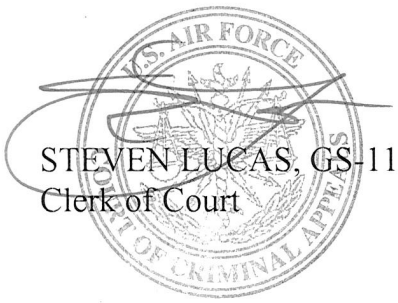

STEVEN LUCAS, GS-11, DAF
Clerk of Court