UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic EDWARD M. NOVAK II
United States Air Force

ACM 37009

18 July 2008

Sentence adjudged 29 March 2007 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: Dawn R. Eflein (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 2 years and 5 months.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Lance J. Wood.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, and Major Amy E. Hutchens.

Before

WISE, FRANCIS, and JACKSON
Appellate Military Judges

PER CURIAM:

Consistent with his plea, the appellant was convicted of one specification of negligent child endangerment, in violation of New Mexico statutes and Article 134, UCMJ, 10 U.S.C. § 934. The adjudged and approved sentence consists of a bad-conduct discharge and confinement for two years and five months. The appellant asserts that the portion of his approved sentence extending to a bad-conduct discharge is excessively harsh.[*] We find to the contrary and affirm.

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

Background

The appellant, a widower, resided in base housing on Cannon Air Force Base, New Mexico, with his 15-month old daughter, for whom he served as the sole caregiver. No other adults resided in the home at the time. On 3 May 2005, the appellant's first sergeant and supervisor went to the appellant's quarters looking for him. Although they could hear music coming from inside the house, and pounded loudly on both the front and back doors, no one responded. After unsuccessfully trying to track the appellant down at various other locations on base, they became concerned for his safety and returned to the house, entering with a key obtained from housing maintenance.

Upon entering the appellant's home, the two men noticed a very strong stench and, after a brief search, found the daughter alone in the house, lying in a urine and feces-soiled crib, wearing a diaper that had apparently not been changed in some time. She herself had urine and feces on her, and had dried cheerios stuck to her face. In the crib with her were urine-soaked cheerios and an empty sippy-cup. Shocked by the child's condition, they called law enforcement authorities.

The child was transported by ambulance to a local hospital for treatment. Examination found her lethargic and mildly dehydrated. She also had a diaper rash so severe that it equated to a second degree chemical-type burn, caused from prolonged exposure to the toxic mix of urine and feces. The child's condition improved quickly with treatment, but she was hospitalized for three days before being deemed well enough to be released to the care of a foster family.

The appellant admitted neglecting his daughter's care. Specifically, he admitted not properly bathing or changing her when needed and that he often left her alone in her crib throughout the day while he went to work, with nothing but a sippy-cup of water, cheerios, and pizza crust to eat. Sometimes he would go home and check on her during his lunch break. Sometimes not. He also at times neglected to feed her breakfast, lunch, or both. Although he knew about her diaper rash, and knew it was bad, he did nothing to seek medical help for her.

Sentence Appropriateness

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007).

The conditions in which the appellant's 15-month-old daughter was found were horrendous and resulted in significant, albeit relatively short term, physical injury. Given

the seriousness of the appellant's offense and its impact on the victim, and considering the appellant's time in service, military record and all other matters in the record of trial, including those presented by the appellant during sentencing, we find nothing inappropriately severe about his punishment. The adjudged and approved sentence was fair, just, and appropriate.

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, 10 U.S.C. §866 (c); *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