UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ONYBERT PAGAN-IRIZARRY
United States Air Force

ACM S31140

3 October 2007

Sentence adjudged 20 June 2006 by SPCM convened at Vandenberg Air Force Base, California. Military Judge: James B. Roan (sitting alone).

Approved sentence: Bad-conduct discharge 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 David P. Bennett.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Donna S. Rueppell.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant asserts that her plea of guilty to absence without leave (AWOL) terminated by apprehension is improvident. The basis of her argument is that her answers to the military judge's questions during the providence inquiry do not support the element of termination by apprehension. We agree, and affirm the findings of guilty with the exception of the words "she was apprehended." *United States v. Jordan*, 57 M.J. 236 (C.A.A.F. 2002); *United States v. Prater*, 32 M.J. 433 (C.M.A. 1991); *United States v. Gaston*, 62 M.J. 404 (C.A.A.F. 2006).

Having affirmed findings of guilt to the lesser included offense, we must reassess the sentence or return the case for a rehearing on the sentence. First, we note that our affirmation of only the lesser included offense does not change the maximum sentence in the case, which was the jurisdictional limitation of the special court-martial. Second, the two-day AWOL that is the subject of the specification in issue is only one of eight UCMJ violations of which the appellant was found guilty. Finally, the military judge sentenced the appellant to a bad-conduct discharge and reduction to the grade of E-1 – far below the maximum allowable punishment. Reassessing the sentence under the criteria set out in *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), we find that the sentence as adjudged and approved is appropriate. We are convinced beyond a reasonable doubt that this "sentence is no greater than that which would have been imposed if the prejudicial error had not been committed." *Id.* at 307-08 (quoting *United States v. Suzuki*, 20 M.J. 248, 249 (C.M.A. 1985)).

Conclusion

The approved findings, as modified, and the sentence, as reassessed, 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 modified findings and approved sentence are

AFFIRMED.

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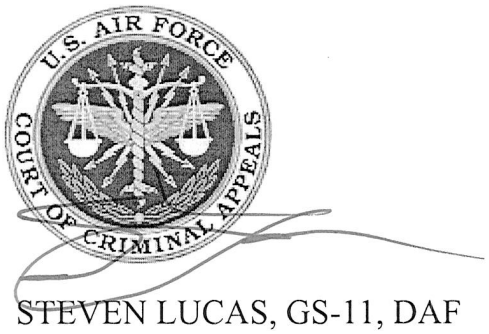

STEVEN LUCAS, GS-11, DAF
Clerk of the Court