UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JENNIFER K. RAINES
United States Air Force

ACM S30904

28 August 2006

Sentence adjudged 26 April 2005 by SPCM convened at Dyess Air Force Base, Texas. Military Judge: Barbara E. Shestko (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 85 days, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Jeffrey A. Ferguson.

Before

MOODY, MATHEWS, and THOMPSON
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with her pleas, of wrongfully using marijuana on divers occasions, wrongful use of cocaine, and wrongfully distributing 3,4 methylenedioxy-methamphetamine,[1] in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A military judge sitting as a special court-martial sentenced the appellant to a bad conduct discharge, confinement for 6 months, and reduction to the grade of E-1. Pursuant to a pretrial plea agreement, the convening authority reduced the appellant's confinement time to 85 days, and otherwise approved the sentence as adjudged.

---

[1] Also referred to as "ecstasy."

On appeal, the appellant asserts no error in the findings of her court-martial, and our review has revealed none; accordingly, we affirm them. The appellant does, however, claim that her sentence is disproportionately harsh in comparison to the administrative sanctions taken against AW, whom the appellant describes as a "co-actor" in her offenses, and VP, whom the appellant also cites as having been involved. The appellant asks that we disapprove the bad-conduct discharge.

We may affirm only those findings and sentence 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). Generally, sentence appropriateness is determined in light of each individual appellant's offenses and their character. *United States v. Snelling,* 14 M.J. 267, 268 (C.M.A. 1982) (citing *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). We are required to consider the punishment imposed on other offenders "in those rare instances in which sentence appropriateness can be fairly determined only by reference to disparate sentences adjudged in closely related cases." *United States v. Lacy,* 50 M.J. 286, 288 (C.A.A.F. 1999) (quoting *United States v. Ballard,* 20 M.J. 282, 283 (C.M.A. 1985)). When one case is disposed of via court-martial and another by different means, however, we are not required to perform the same analysis, for there is no record of findings and sentence that can be compared. *United States v. Noble,* 50 M.J. 293, 294-95 (C.A.A.F. 1999). In the absence of evidence suggesting illegal discrimination in the prosecution or referral of the appellant's case, we give disparate-disposition evidence only "such consideration as [we] deem appropriate." *Id.* at 295.

We find the record insufficient to establish that the different dispositions of the appellant's case and those of VP and AW compel comparison. Although the appellant's providency inquiry and one letter submitted in clemency suggest similarities between the offenses committed by all three, the record is both sparse and largely one-sided. We do not know, for example, to what extent the appellant's claims inculpating VP and AW might have been supported or contradicted by other evidence, and we have no information at all concerning the character of those other offenders. The appellant has not alleged any illegal motive or other impropriety in the handling of her case, and we decline, on the basis of the evidence before us, to infer that any exist. Taking into account the many offenses committed by the appellant -- which included more than fifty uses of marijuana, use of cocaine, and distribution of ecstasy -- as well as her character as revealed in the record, we find her sentence to be appropriate. *United States v. Peoples,* 29 M.J. 426, 427 (C.M.A. 1990).

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.

Senior Judge MOODY participated in this decision prior to his retirement.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator