

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class AUSTIN Q. RINEHART
United States Air Force**

ACM 36548

28 March 2007

Sentence adjudged 10 November 2005 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 98 days, forfeiture of \$600.00 pay per month for 2 months, reduction to E-1, and a reprimand.

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

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Major Kimani R. Eason.

Before

BROWN, MATHEWS, and THOMPSON
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of carnal knowledge, sodomy with a child under age 16, assault consummated by a battery on a child under age 16, and indecent acts with a child under age 16, in violation of Articles 120, 125, 128, and 134, UCMJ, 10 U.S.C. §§ 920, 925, 928, 934. A general court-martial comprised of a military judge sentenced the appellant to a dishonorable discharge, confinement for 98 days, hard labor without confinement for 2 months, restriction to the limits of Pope Air Force Base for 2 months, forfeiture of \$600.00 pay per month for 2 months, reduction to the grade of E-1, and a reprimand. Except for the hard labor without confinement and the restriction, the convening authority approved the sentence as adjudged. On appeal, the appellant asserts his

sentence is inappropriately severe. We find the assignment of error to be without merit and we affirm.

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 nature and seriousness of his offenses. *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). 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. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

The appellant’s criminal conduct in this case was serious. On four separate occasions he had sexual intercourse with HL, a girl he knew to be fourteen years old. He also committed sodomy with HL by placing his penis in her mouth, and committed an indecent act by placing his mouth on her vagina. Prior to having sexual intercourse with the appellant, HL was a virgin. During the sentencing phase of the trial, HL read a statement describing the effect the appellant’s actions had on her. She concluded the statement with the following:

This has taught me not to trust everyone, and to stick around with people you know love you. And some days, I don’t want to be on the Earth. I want to run off the edge. And others, I want [to] live a life. I just want to live another life. I know now, what I didn’t know then. I live in reality, and reality isn’t that wonderful sometimes.

We have given individualized consideration to this particular appellant. After carefully examining the submissions of counsel and taking into account all the facts and circumstances surrounding the crimes of which the appellant was found guilty, 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

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator