

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class GEORGE W. ROBERTSON
United States Air Force**

ACM S30857

13 October 2006

Sentence adjudged 13 January 2005 by SPCM convened at Francis E. Warren Air Force Base, Wyoming. Military Judge: James L. Flanary.

Approved sentence: Bad-conduct discharge, confinement for 1 month, forfeiture of \$823.00 pay per month for 3 months, 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 Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Jamie L. Mendelson.

Before

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM

We reviewed the record of trial, the error assigned, and the government's reply. In determining the appropriateness of a sentence, this Court exercises its "highly discretionary" powers to assure that justice is done and the appellant receives the punishment he deserves. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). Performing this function does not authorize this Court to exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which "sentence appropriateness should be judged [is] by 'individualized consideration' of the particular [appellant] 'on the basis of the

nature and seriousness of the offense and the character of the offender.” *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

Taking into account all of the facts and circumstances of the case *sub judice*, we conclude that the appellant’s sentence did not “exceed ‘relative uniformity’ . . . [or] ‘rise to the level of an obvious miscarriage of justice or an abuse of discretion.’” *Snelling*, 14 M.J. at 269 (quoting *United States v. Olinger*, 12 M.J. 458, 461 (C.M.A. 1982)). In the final analysis, this case is more appropriately viewed as a matter of clemency than an issue of sentence appropriateness. We hold that, as a matter of law, the appellant’s sentence is not inappropriately severe.

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 findings and sentence are

AFFIRMED.

OFFICIAL

JEFFREY L. NESTER
Clerk of Court