UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class PAUL A. ROBINSON
United States Air Force

ACM S31525

14 July 2009

Sentence adjudged 07 June 2008 by SPCM convened at Langley Air Force Base, Virginia. Military Judge: Le T. Zimmerman.

Approved sentence: Bad-conduct discharge, confinement for 4 months, forfeiture of $200.00 pay per month for 4 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Lance J. Wood, and Captain Marla J. Gillman.

Appellate Counsel for the United States: Major Jeremy S. Weber, Captain Coretta E. Gray, and Gerald R. Bruce, Esquire.

Before

BRAND, HEIMANN, and HELGET
Appellate Military Judges

PER CURIAM:

Contrary to his pleas, the appellant was found guilty of one specification of wrongfully using heroin on divers occasions, and one specification of wrongfully using methadone, in violation of Article 112a, UCMJ; 10 U.S.C. § 912a.[1] The approved sentence consists of a bad-conduct discharge, confinement for four months, forfeitures of $200 pay per month for four months, and reduction to E-1.[2]

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[1] Heroin is a Schedule I controlled substance and methadone is a Schedule II controlled substance.

[2] Although not affecting the legal sufficiency of the findings or sentence, the court-martial order erroneously states that the appellant's rank was Airman Basic at the time of trial, when in fact he was an Airman First Class. We order the promulgation of a corrected court-martial order.

The issue on appeal, raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), is whether the portion of the appellant's sentence which includes a bad-conduct discharge is inappropriately severe.

Background

In December 2007, the appellant provided a urine sample pursuant to a unit-wide urinalysis inspection of the 1st Aircraft Maintenance Squadron, Langley Air Force Base (AFB), Virginia. His sample was sent to the Armed Forces Institute of Pathology (AFIP) for drug testing and tested positive for morphine.

On 11 January 2008, the appellant was interviewed by Mr. GL, a security forces investigator at Langley AFB, about his positive drug test for morphine. During the interview, after waiving his Article 31, UCMJ, rights, the appellant admitted that he had a history of drug abuse, namely heroin. The appellant admitted he had used heroin around the time when he provided the urine sample in December 2007, and his most recent use occurred on 10 January 2008, the night before his interview. Dr. DT, a forensic toxicologist with the Air Force Drug Testing Laboratory, testified that someone who uses heroin will test positive for morphine.

The appellant also admitted that he suffered from symptoms of withdrawal and in order to combat such symptoms, he used methadone. He states that while he was on leave in Pennsylvania (PA) in June 2007, he was trying to wean off of heroin, and his friend gave him some methadone to suppress the withdrawal effects. He overdosed on the methadone and had to be admitted to a civilian hospital. Medical records from York Hospital in York, PA, dated 4-6 June 2007, reflect that a urine sample provided by the appellant was positive for methadone. Dr. DT also testified that methadone is used to blunt the effects of heroin and to help an individual prevent a relapse of using heroin again.

Inappropriately Severe Sentence

The appellant asserts that the portion of his sentence which includes a bad-conduct discharge is inappropriately severe. We disagree.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [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). "We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006) (citing *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A 1988)); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We have a great deal of discretion in determining whether a particular sentence is appropriate but are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 287-88 (C.A.A.F. 1999); *Healy*, 26 M.J. at 395-96.

The maximum punishment in this case was the jurisdictional limit for a special court-martial, which includes a maximum of 12 months confinement and a bad-conduct discharge. The appellant's approved sentence was a bad-conduct discharge, confinement for four months, forfeitures of $200 pay per month for four months, and reduction to E-1. Having given individualized consideration to this particular appellant, the nature of the offenses, the appellant's record of service, and all other matters in the record of trial, we hold that the approved sentence, which includes a bad-conduct discharge, is not inappropriately severe.

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; *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