UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JASON RODRIGUEZ
United States Air Force

ACM 35210

26 August 2003

Sentence adjudged 16 May 2002 by GCM convened at Francis E. Warren Air Force Base, Wyoming. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Lori M. Jemison (legal intern).

Before

VAN ORSDOL, STUCKY, and ORR, V.A.
Appellate Military Judges

OPINION OF THE COURT

ORR, V.A., Judge:

Pursuant to his pleas, the appellant was convicted in a general court-martial before military judge sitting alone, of one specification of larceny on divers occasions, in violation of Article 121, UCMJ, 10 U.S.C. § 921. The appellant was sentenced to a bad-conduct discharge, confinement for 6 months, and reduction to E-1. The convening authority approved the adjudged sentence. The appellant asserts in this appeal that his sentence is inappropriately severe.

Background

The appellant was assigned to the 790th Security Forces Squadron at Francis E. Warren Air Force Base, Wyoming. The appellant entered into an agreement to drive Lieutenant Colonel (Lt Col) Elvis Vasquez's vehicle directly from Bridgeport, Connecticut to San Diego, California. In exchange, Lt Col Vasquez agreed to compensate the appellant for his time and to pay for his expenses. Lt Col Vasquez is a commissioned officer in the United States Marine Corps and the appellant's uncle.

On 2 July 2001, the appellant began his trip from Bridgeport, Connecticut, to San Diego, California, via the agreed upon route. After the trip had started, the appellant decided to drive to McDonough, Georgia, to see his young daughter. He completed his visit with his daughter and proceeded to San Diego. When Lt Col Vasquez learned that the appellant deviated from the agreed upon route, he gave the appellant a check for only $90.00 to cover his expenses during the trip. This was less than the amount Lt Col Vasquez had agreed would be proper compensation for transporting the vehicle.

The appellant was not pleased to receive less than the agreed upon amount. The appellant discussed the situation with an acquaintance. The acquaintance told the appellant how he could use information on Lt Col Vasquez's check to transfer money from his uncle's account via online transfers. On 22 August 2001, the appellant transferred $500.00 from Lt Col Vasquez's checking account to the appellant's credit card. One week later, on 31 August 2001, the appellant followed the same procedure and transferred an additional $1,910.00 from his uncle's account to the appellant's credit card. This transfer paid off the appellant's credit card balance in full. Finally, on 11 September 2001, the appellant transferred an additional $1,852.83 from Lt Col Vasquez's account, and he purchased a computer online for $1,762.98. The appellant used the bank routing number and account information on the check Lt Col Vasquez had written to him to make each of the transfers. The total amount of the transfers was $6,025.81.

Lt Col Vasquez learned about the illegal transfers after he received an insufficient funds notice from his credit union. In his complaint, Lt Col Vasquez said he "wanted the sternest punishment meted out to the perpetrator, even if that individual was his nephew." During his sentencing argument, the trial defense counsel told the military judge that a punitive discharge was not merited considering the appellant's "total career, the mitigation of the offenses, and the nature of the family squabble." The military judge sentenced the appellant to a bad-conduct discharge, confinement for 6 months, and reduction to E-1. The appellant's clemency package included a letter from Lt Col Vasquez, which read, "Although my sense of justice still deems that punishment is warranted, I've reconsidered and now believe that a BCD [bad-conduct discharge] is too harsh a sentence." The convening authority approved the sentence as adjudged, including the bad-conduct discharge.

Discussion

Courts of criminal appeals "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). In order to determine the appropriateness of the sentence, this Court must consider the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1988).

The appellant asserts that his sentence is unduly harsh for a matter that could have been handled within his family. He did not, however, commit larceny in the capacity of a private citizen in "Hometown, U.S.A." The appellant was on active duty in the United States Air Force and he knew that his conduct was subject to the Uniform Code of Military Justice. Nothing in the record indicates that the appellant and his uncle attempted to resolve the larceny within their family. The appellant was not willing to show his uncle, Lt Col Vasquez, any consideration for paying the appellant less than the agreed upon amount of compensation. Similarly, Lt Col Vasquez was not willing to allow his nephew, the appellant, to repay the money he had stolen.[*] Indeed, it would appear that even during clemency, Lt Col Vasquez still felt that "punishment was warranted." Once the matter was placed within the military justice system, the "family" nature of the larceny offense was only one factor to consider in determining an appropriate sentence. Based upon the entire record, we find that the appellant's approved sentence is not inappropriately severe. *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

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 (2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

HEATHER D. LABE
Clerk of Court

[*] In his unsworn statement, the appellant told the military judge he had already repaid Lt Col Vasquez $3,000.00 and that he was working on paying back the rest of the money.