UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic MICAH J.E. SAGON
United States Air Force

ACM 38022

28 September 2012

Sentence adjudged 2 August 2011 by GCM convened at Joint Base Pearl Harbor-Hickam, Hawaii. Military Judge: Vance H. Spath (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 145 days.

Appellate Counsel for the Appellant: Major Michael S. Kerr and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Roberto Ramirez; and Gerald R. Bruce, Esquire.

Before

ROAN, WEISS, and SARAGOSA
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

The appellant was convicted by military judge sitting as a General Court-Martial in accordance with his pleas of one specification of violating a lawful general order by wrongful use of spice, in violation of in violation of Article 92, UCMJ, 10 U.S.C. § 892, coupled with one specification of wrongful distribution of Ecstasy, one specification of wrongful use of marijuana, and one specification of wrongful use of Ecstasy, each in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged and approved sentence consists of a bad-conduct discharge and 145 days of confinement. On appeal, the appellant asserts that his sentence is inappropriately severe.[1]

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[1] The issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Background

The appellant was assigned to Joint Base Pearl Harbor-Hickam, Hawaii. After receiving a nonjudicial punishment action for wrongful use of marijuana, the appellant began the Alcohol and Drug Abuse Prevention and Treatment program. In this program he met Airman M. Together, the two sought out a seller of "spice" on Craig's List and used the "spice" they purchased on 7-10 separate occasions in violation of a lawful general order prohibiting the use of intoxicating substances, which specifically included "spice." Appellant also used "spice" without Airman M an additional 3-4 times. When Airman M wanted Ecstasy, the appellant arranged for the purchase of Ecstasy with his cousin's girlfriend. On three separate occasions, he took money from Airman M, used the money to purchase Ecstasy from his cousin's girlfriend, and in turn distributed the Ecstasy to Airman M. Despite the nonjudicial punishment action for wrongful use of marijuana, he again used marijuana on 3-4 occasions with Airman M in December 2010 through January 2011. On one of these occasions, he also used Ecstasy.

Inappropriately Severe Sentence

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercise of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy,* 26 M.J. 394, 395-96 (C.M.A. 1988).

This Court has carefully examined the submissions of counsel, the entire record of trial, the character of the appellant, appellant's military record, the nature and seriousness of the offenses, and taken into account all the facts and circumstances surrounding the offenses of which he was found guilty. We do not find that the appellant's sentence, one which includes a bad-conduct discharge, is inappropriately severe.

Conclusion

The approved findings and the sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.[2] Article 66(c), UCMJ,

[2] The Court notes an administrative error that exists in the record of trial. The court-martial order indicates a plea and finding of guilty to Specification 2 of Charge II, but includes the language of Specification 3. Specification 2 of Charge II was withdrawn prior to plea, but the remaining specification was NOT renumbered. The court-martial order should read Specification 3 of Charge II to remain consistent with the charge sheet. A corrected court-martial order is ordered.

10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly the findings and the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court