

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Lieutenant Colonel LEE G. SALTZGABER
United States Air Force**

ACM 36091

31 March 2006

Sentence adjudged 2 September 2004 by GCM convened at Mountain Home Air Force Base, Idaho. Military Judge: Jack L. Anderson.

Approved sentence: Dismissal, confinement for 90 days, and forfeiture of all pay and allowances.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Sandra K. Whittington.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have reviewed the record of trial, the appellant's assignment of error, and the government's reply thereto. The appellant was tried on charges stemming from a sexual affair he had with one of his enlisted subordinates while he was serving as a squadron commander.¹ On appeal, he claims his trial defense counsel were deficient.² Finding no error, we affirm.

¹ The appellant was convicted, contrary to his pleas, of one specification of maltreatment of subordinates, in violation of Article 93, UCMJ, 10 U.S.C. § 893, and, in accordance with his pleas, of one specification of fraternization, in violation of Article 134, UCMJ, 10 U.S.C. § 934.

² The appellant raised this assignment of error pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Counsel are presumed competent until proven otherwise. *Strickland v. Washington*, 466 U.S. 668, 689 (1984). The appellant bears the burden of establishing that the alleged deficiencies actually occurred; that they were measurably below the performance ordinarily expected of trial lawyers; and that there is a reasonable probability that, absent the deficient conduct of his lawyers, he would have received a more favorable result. *United States v. Sales*, 56 M.J. 255, 258 (C.A.A.F. 2002); *United States v. Polk*, 32 M.J. 150, 153 (C.M.A. 1991).

The appellant argues that his trial defense counsel were ineffective at pretrial by failing to offer a statement detailing his interactions with his enlisted paramour, which he claims included open displays of affection that would, in the appellant's estimation, have discredited her version of events. The focus of the appellant's counsel prior to trial was to head off a court-martial. This was a reasonable strategy, and one that would hardly have been served well by evidence suggesting that the appellant's misconduct was so open and notorious. Next, the appellant asserts that during the court-martial itself, his counsel did not call witnesses who saw him and his paramour together "on countless occasions" and could have testified about their upbeat demeanor after emerging from "behind closed doors." This evidence would likewise have undermined the defense strategy, which by the time of trial had plainly shifted to damage limitation.

Finally, the appellant avers that his civilian defense counsel "seemed to concede" a punitive discharge was appropriate in his clemency letter to the convening authority. Under other circumstances, we might find such a concession deficient. *See, e.g., United States v. Dresen*, 36 M.J. 1103, 1113 (A.F.C.M.R. 1993). Here, however, there was no concession; the civilian defense counsel was merely echoing the appellant's own clemency request, which asked for a reduction in confinement and for no other form of relief. We see nothing untoward in counsel's effort to secure only what the appellant himself sought in clemency. Because the appellant has not shown that his counsel's tactical decisions before, during, or after trial were deficient, we conclude he has not carried his burden of proving ineffective assistance of counsel. *See United States v. Gibson*, 46 M.J. 77, 78 (C.A.A.F. 1997).

The 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

ANGELA M. BRICE
Clerk of Court