UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman MATHEW P. SCHEURER
United States Air Force

ACM 34866 (f rev)

9 January 2006

Sentence adjudged 3 August 2001 by GCM convened at Yokota Air Base, Japan. Military Judge: David F. Brash (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 3 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Major Jeffrey A. Vires.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo and Lieutenant Colonel Jennifer R. Rider.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

The Court of Appeals for the Armed Forces returned this case to us after dismissing one specification of a violation of Article 112a, UCMJ, 10 U.S.C. § 912a, for a single use of ecstasy, and one charge and specification for driving a car while impaired by a controlled substance, in violation of Article 111, UCMJ, 10 U.S.C. § 911. *United States v. Scheurer*, 62 M.J. 100 (C.A.A.F. 2005). We reassess the sentence and affirm.

The appellant was convicted of multiple offenses involving the use, introduction, and distribution of illegal drugs. After carefully examining the record of trial, we are satisfied that, absent the two dismissed offenses, the court would have imposed a sentence of at least a dishonorable discharge, confinement for 33 months, forfeiture of all pay and allowances, and reduction to E-1. *See United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986); *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002). The true

gravamen of this case was not driving under the influence or a single use of ecstasy. The crux of the criminal activity was the distribution of illegal drugs and their introduction onto a military installation. These offenses, more than any other, dictated the severity of the sentence.

Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires this Court to approve only as much of a sentence as it finds correct in law and fact and determines should be approved. *United States v. Amador*, 61 M.J. 619, 626 (A.F. Ct. Crim. App. 2005). The determination of sentence appropriateness "involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *Id.* at 626 (quoting *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988)).

Sentence appropriateness is judged by individualized consideration of the nature and seriousness of the offense, the appellant's record of service, the character of the offender, and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959); *Amador*, 61 M.J. at 626.

Having given individualized consideration to this particular appellant and carefully reviewing the facts and circumstances of his case, we have determined that the sentence as reassessed is appropriate. *See Snelling*, 14 M.J. at 268. The remaining findings and sentence, as reassessed, 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). We affirm only so much of the sentence as includes a dishonorable discharge, confinement for 33 months, forfeiture of all pay and allowances, and reduction to E-1. Accordingly, the remaining findings and sentence, as reassessed, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court