

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class SHANE T. SEIDER
United States Air Force

ACM 35154 (f rev)

10 January 2005

Sentence adjudged 13 March 2002 by GCM convened at Randolph Air Force Base, Texas. Military Judge: Steven A. Hatfield.

Approved sentence: Bad-conduct discharge, confinement for 15 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Major Terry L. McElyea, Major Andrew S. Williams, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major John C. Johnson.

Before

STONE, GENT, and SMITH
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court for the second time. In *United States v. Seider*, ACM 35154 (A.F. Ct. Crim. App. 11 Aug 2003) (unpub. op.), we affirmed the findings and sentence. Our superior court, citing its decision in *United States v. Walters*, 58 M.J. 391 (C.A.A.F. 2003), subsequently set aside and dismissed the finding of guilty as to Specification 1 of the Charge involving wrongful use of cocaine. Specification 2 of the Charge, based on wrongful distribution of cocaine, was affirmed. *United States v. Seider*, 60 M.J. 36 (C.A.A.F. 2004).

On remand, we are to “either reassess the sentence based on the affirmed guilty findings or order a rehearing on the sentence.” *Seider*, 60 M.J. at 38. Our superior court recently summarized the required analysis for determining when and how to reassess a sentence as follows:

In *United States v. Sales*, 22 MJ 305 (CMA 1986), this Court set out the rules for sentence reassessment by a Court of Criminal Appeals. If the court can determine that, absent the error, the sentence would have been at least of a certain magnitude, then it may cure the error by reassessing the sentence instead of ordering a sentence rehearing. *Id.* at 307. A sentence of that magnitude or less “will be free of the prejudicial effects of error.” *Id.* at 308. If the error at trial was of constitutional magnitude, then the court must be satisfied beyond a reasonable doubt that its reassessment cured the error. *Id.* at 307. If the court “cannot reliably determine what sentence would have been imposed at the trial level if the error had not occurred,” then a sentence rehearing is required. *Id.*

United States v. Doss, 57 M.J. 182, 185 (C.A.A.F. 2002).¹

Under the facts and circumstances of this case, we are confident we can reassess the sentence in accordance with the established criteria and fulfill our obligation to “assure that the [reassessed] sentence is no greater than that which would have been imposed if the prejudicial error had not been committed.” *Sales*, 22 M.J. at 308. After careful consideration of the entire record, we are satisfied beyond a reasonable doubt that without Specification 1, the court members would have adjudged a sentence of no less than a bad-conduct discharge, confinement for 5 months, forfeiture of \$737.00 pay per month for 5 months, and reduction to E-1. In addition, we find this reassessed sentence appropriate for the offense involved. Article 66(c), UCMJ, 10 U.S.C. § 866(c).

¹ Notwithstanding this longstanding body of law, our superior court recently reversed a decision of this Court involving sentence reassessment. See *United States v. Mason*, No. 03-0141/AF (23 Nov 2004). Despite our confidence that the reassessed sentence was no greater than that which would have been imposed if no prejudicial error had occurred in the case, our superior court concluded we abused our discretion and returned the case for a sentence rehearing. The impact of this summary disposition on *Sales* and its progeny appears to be limited.

The sentence, as reassessed, is correct in law and fact and no error prejudicial to the appellant's substantial rights occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the sentence, as reassessed, is

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court