UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JOSEPH R. SHOCKLEY
United States Air Force

ACM 37884

22 February 2013

Sentence adjudged 28 January 2011 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Vance H. Spath.

Approved sentence: Bad-conduct discharge, confinement for 12 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz and Captain Robert D. Stuart.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel C. Taylor Smith; Major Brian C. Mason; and Gerald R. Bruce, Esquire.

Before

STONE, GREGORY, and SANTORO
Appellate Military Judges

PER CURIAM:

A general court-martial composed of officer and enlisted members convicted appellant, contrary to his pleas, of aggravated sexual assault of a child and sodomy with a child, in violation of Articles 120 and 125, UCMJ, 10 U.S.C. §§ 920, 925. He was found not guilty of reckless driving. The adjudged sentence was a bad conduct discharge, confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority reduced the period of confinement to 12 months but otherwise approved the sentence. The appellant raises two issues pursuant to *United States v Grostefon*, 12 M.J. 431 (C.M.A. 1982): (1) whether the evidence of aggravated sexual

assault of a child is legally and factually insufficient, and (2) whether he received ineffective assistance of counsel. Finding no error, we affirm.

Evidence of Aggravated Sexual Assault of a Child

"The test for legal sufficiency of the evidence is 'whether, considering the evidence in the light most favorable to the prosecution, a reasonable fact-finder could have found all of the essential elements proven beyond a reasonable doubt.'" *United States v. Humpherys*, 57 M.J. 83, 94 (C.A.A.F. 2002) (quoting *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987)). The test for factual sufficiency is "whether, after weighing the evidence . . . and making allowances for not having personally observed the witnesses, [we are] convinced of [the appellant]'s guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

In early August 2010, the 20-year-old appellant met JS, the 14-year-old dependent daughter of an Army sergeant first class. Their relationship quickly became intimate and included multiple occasions of sexual intercourse as well as oral sodomy. The primary litigated issue was whether the appellant had made a reasonable mistake of fact as to her age. The appellant argued that JS told him she was over 16 and that he only learned of her true age the day investigators interviewed him. He also argued that JS and her friend AH repeatedly misled the appellant as to JS's age because JS did not want to "lose" the appellant.

The prosecution introduced significant evidence to the contrary. The appellant and JS attempted to enter Shaw Air Force Base together, but JS did not have her identification card. In the appellant's presence, after searching for JS's information in the computer, the visitors' center clerk announced her birth year as 1995, making her 14 years old. JS's father testified that he saw JS and the appellant together in a park and, after confronting the appellant, told him that JS was either "a minor" or 14 years old. JS testified that the appellant told her not to tell anyone about the sexual aspect of their relationship and that she and the appellant continued to engage in sexual intercourse even after all of the above incidents occurred.

We conclude that the court-martial could reasonably have found that the prosecution established that the appellant was not mistaken about JS's age. Having reviewed the entirety of the record and making allowances for not having personally observed the witnesses, we also are convinced of the appellant's guilt beyond a reasonable doubt.

Assistance of counsel

The appellant alleges that his trial defense counsel were ineffective by failing to explore fully his mental health state and failing to adequately prepare for trial. We ordered the submission of affidavits from both trial defense counsel. While there are

some inconsistencies between the appellant's affidavit and those of counsel, we need not order additional fact-finding to resolve the assigned error in this case. *United States v. Ginn*, 47 M.J. 236 (1997).

To establish ineffective assistance of counsel, "an appellant must demonstrate both (1) that his counsel's performance was deficient, and (2) that this deficiency resulted in prejudice." *United States v. Green*, 68 M.J. 360, 361 (C.A.A.F. 2010) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

The appellant argues that "potentially relevant mental health records" were not introduced, that "the forensic psychologist was underutilized," and that these things "may have had some effect on the findings" and sentence. Such generalized statements are insufficient to carry the appellant's burden under *Strickland*. Nevertheless, we have reviewed the affidavits of trial defense counsel and conclude that both of them fully evaluated the appellant's case and made reasonable tactical decisions during the course of their representation. Even assuming arguendo that there was deficient performance, we are unable to discern any prejudice.

Conclusion

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, 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.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court

[*] We note that the overall delay of more than 540 days between the time of docketing and review by this Court is facially unreasonable. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). Having considered the totality of the circumstances and the entire record, we find that the appellate delay in this case was harmless beyond a reasonable doubt. *Id.* at 135-36 (reviewing claims of post-trial and appellate delay using the four-factor analysis found in *Barker v. Wingo*, 407 U.S. 514, 530 (1972)).