UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman BENJAMIN J. SIZEMORE
United States Air Force

ACM 38020

14 Mar 2013

Sentence adjudged 4 August 2011 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Francisco Mendez (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 20 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Daniel E. Schoeni and Captain Thomas Franzinger.

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

Before

GREGORY, HARNEY, and SOYBEL
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

GREGORY, Senior Judge:

At arraignment before general court-martial composed of military judge alone, the appellant entered pleas of guilty to one specification of making a false official statement, in violation of Article 107, UCMJ, 10 U.S.C. § 907; two specifications of larceny, in violation of Article 121, UCMJ, 10 U.S.C. § 921; and one specification of wrongful appropriation as a lesser included offense of a third charged larceny, in violation of Article 121, UCMJ. The appellant entered pleas of not guilty to the remaining charges and specifications. The military judge accepted his pleas and, after trial on the merits,

also convicted him contrary to his pleas of the charged greater offense of larceny as well as one specification of attempted distribution of cocaine, one specification of attempted introduction of cocaine, and one specification of distribution of marijuana, in violation of Articles 80 and 112a, UCMJ, 10 U.S.C. §§ 880, 921. The court sentenced him to a bad-conduct discharge, confinement for 20 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged. The appellant argues that his sentence is inappropriately severe.[*]

We review the appropriateness of the approved sentence 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 exercises 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). Upon consideration of the appellant's character, the nature and seriousness of his offenses, and the entire record of trial, we find the sentence appropriate.

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 approved findings and sentence are

AFFIRMED.

FOR THE COURT

LAQUITTA J. SMITH
Appellate Paralegal Specialist

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