UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman CHANCE W. SLAUGHTER
United States Air Force

ACM S31419

31 October 2008

Sentence adjudged 05 October 2007 by SPCM convened at Osan Air Base, Republic of Korea. Military Judge: Gregory Friedland.

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Lance J. Wood.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Coretta E. Gray

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of wrongful divers use of Percocet, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The approved sentence consists of a bad-conduct discharge, confinement for 4 months and reduction to E-1.

The issue on appeal is whether the military judge abused his discretion when he denied a defense requested delay. We find the military judge did not abuse his discretion, and affirm.

Background

In May 2006, the appellant had knee surgery and was prescribed Percocet. After using all of his prescribed pills, the appellant found that although he was not in pain, he still wanted Percocet. Both a friend and his girlfriend gave him Percocet. He was even able to get some when he was home on leave. Usually after using the Percocet, the appellant would drink alcohol. From November 2006 until May 2007, the appellant used Percocet 20 to 30 times. He would either swallow the pills or crush and snort them.

The trial defense counsel requested the appointment of an expert consultant in August 2007. Initial contact was made with the consultant between 7 and 11 September 2007. The appellant's records were made available to the consultant on 17 and 18 September 2007. After reviewing the records and talking with the appellant, the expert suggested that she needed to do a personal evaluation to explore whether the appellant had a personality disorder which would be mitigating evidence for sentencing purposes.

The expert consultant was only available telephonically during trial, as she was unable to travel to the court-martial from Hickam Air Force Base, Hawaii. She testified she would need 3 to 5 days to complete the evaluation and that the initial evaluation could be done locally* with another provider. The trial defense counsel requested a Rule for Court-Martial (R.C.M.) 906(b)(1) delay on the eve of trial. After conducting an evidentiary hearing, the military judge denied the request.

During the hearing on the continuance request, the expert consultant explained that there were 'red flags' in the appellant's medical history which indicated there may be a personality disorder. During the Article 39a session, the expert explained she had the opportunity to fully and fairly evaluate the appellant's records, she was prepared to testify about mood disorders, and if the appellant had a mood disorder it would be mitigating evidence.

The military judge considered the criteria set out in R.C.M. 906(b)(1), specifically insufficient opportunity to prepare for trial, unavailability of an essential witness, the interest of the government in the order of trial and related cases, and illness of the accused, counsel, military judge, or a member.

During the pre-sentencing phase of the trial, Dr. Finney, the expert consultant, was qualified and accepted as an expert. She testified at length about the appellant's records, the indicators of the personality disorder and how that would contribute to his behavior, and about the addiction potential of Percocet. She also testified she had not personally met with the appellant.

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* The government was willing to make a local psychologist available for the initial diagnostic review.

Discussion

The standard of review in this case is abuse of discretion. *United States v. Wiest*, 59 M.J. 276, 279 (C.A.A.F. 2004). "This Court will not overturn a [military] judge's decision to deny a request for continuance unless we find it clearly unreasonable and prejudicial." *United States v. Andrews*, 36 M.J. 922, 925 (A.F.C.M.R. 1993). Factors to be considered include surprise, nature of any evidence involved, timeliness of the request, length of the continuance, prejudice to opponent, moving party received prior continuances, good faith of moving party, possible impact on verdict, and prior notice. *United States v. Miller*, 47 M.J. 352, 358 (C.A.A.F. 1997).

The military judge did not abuse his discretion when he denied the defense request for a continuance. Assuming arguendo that he did, the error is harmless. The expert testified essentially as she would have had there been a delay. The only evidence missing was that there was in fact a personality disorder.

The approved findings and the 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.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court