**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Senior Airman BRENT E. SLEMP**
**United States Air Force**

**ACM 37947**

**25 January 2013**

Sentence adjudged 8 April 2011 by GCM convened at Nellis Air Force Base, Nevada. Military Judge: Amy Bechtold (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, forfeiture of all pay and allowances; and reduction to E-1.

Appellate Counsel for the Appellant: Captain Shane A. McCammon.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Major Daniel J. Breen; and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and HECKER
Appellate Military Judges



PER CURIAM:

A general court-martial composed of a military judge convicted the appellant, consistent with his pleas, of conspiracy to sell military property, theft of military property, and use of marijuana, in violation of Articles 81, 112a and 121, UCMJ, 10 U.S.C. §§ 881, 912a, 921. The adjudged sentence consisted of a bad-conduct discharge, confinement for 5 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged. On appeal, the appellant asserts his sentence is inappropriately severe. Finding no error that materially prejudices the appellant, we affirm.

*Background*

While deployed to Iraq, the appellant stole military property valued at approximately $7,800. This military property consisted of two sets of night vision goggles and an infrared aiming apparatus, used widely by the military during night operations in Iraq and Afghanistan. These items had been issued to military members in Iraq and the appellant knew another military member or contractor was accountable for them.

The night vision goggles, known as AN/PVS-14, are military grade night vision goggles that can be mounted on a helmet or weapon in order to assist with night vision and short range weapon sighting. Each was valued at over $3,600. The manufacturer does not distribute this equipment outside military channels, in order to protect the exclusive military technology and capabilities and the Department of Defense has designated them as "sensitive items," requiring a high degree of protection and control. The other item he stole was an Army Navy/Priority Egress Queuing (PEQ)-2 Target Pointer Illuminator Aiming Light (TPIAL), which is a military grade aiming apparatus containing two infrared laser emitters designed for covert targeting, which can be mounted on a wide range of military equipment and weapons. It was valued at over $585.

Initially, after taking the items, the appellant kept them in his locker at his deployed location. When no one reported the items missing after several weeks, the appellant shipped them to his girlfriend's home in Spokane, Washington. While still in Iraq, the appellant responded to three advertisements posted by sellers on a commercial website advertising itself as "the world's largest online gun auction." He offered to trade some of the stolen items for a 5.56 millimeter rifle, two handguns, and a bridal set. He then sent photographs of the military property. Two of the sellers were suspicious and contacted military authorities to report the appellant's efforts to sell what appeared to be military property.

One of those sellers, Mr. EL, began working with agents of the Air Force Office of Special Investigations (AFOSI). Concerned that the appellant would send the items to someone else, they directed Mr. EL to tell the appellant he would purchase the three items and to ask they be sent to North Dakota. Mr. EL told the appellant he would mail him two handguns in exchange. The appellant responded that his night vision goggles were worth much more than the handguns and asked for a counteroffer. Eventually the appellant told Mr. EL he was going to "pass on the trade" as he would never get another chance to own something like them. When Mr. EL asked for information on where the appellant had received the items, the appellant said he had gotten them in a trade several years earlier but did not remember the source.

Another seller, Mr. JJ, was advertising a bridal set on the gun auction website. When contacted by the appellant about trading the bridal set for his items, Mr. JJ asked if

the night vision goggles were "mil[itary] issue or civilian knock-off." The appellant replied they were the "real deal" and said he was more interested in firearms than the bridal set. The appellant later rejected Mr. JJ's offer of cash or other items in trade, saying he was only interested in firearms. Meanwhile, based on his prior service in the Army, Mr. JJ knew military night vision goggles were a controlled item. Using a social networking site, Mr. JJ identified the appellant as an Air Force member assigned to Nellis Air Force Base and contacted AFOSI.

Meanwhile, the appellant was also communicating with Mr. BA about trading the items for the 5.56 millimeter rifle. Unlike the other two potential purchasers, Mr. BA did not contact military authorities about the appellant's conduct. After Mr. BA agreed to trade the rifle for the three items of military property, the appellant directed his girlfriend to mail the items to Mr. BA. In exchange, Mr. BA mailed the rifle to a federal firearms licensed dealer the appellant used in Nevada. When the appellant returned from deployment a month later, he picked up the rifle from the dealer.

A search warrant executed on the appellant's email account led AFOSI agents to Mr. BA's residence, where they seized the military property he had received from the appellant. Mr. BA told the agents he intended to sell the property for cash. Another search warrant executed at the appellant's residence found the 5.56 millimeter rifle.

Agents also found drug paraphernalia and residue in the appellant's residence. The appellant was later selected for a random urinalysis, which was positive for the metabolite of marijuana, and admitted to smoking marijuana with his girlfriend while he was under investigation for the theft of military property.

*Sentence Appropriateness*

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). In doing so, we "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we] find[] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, 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. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007). We have a great deal of discretion in determining whether a particular sentence is appropriate, but 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).

The appellant argues his sentence to a bad-conduct discharge is inappropriately severe in light of his eight year military career, which included four deployments to Iraq, his combat experience and his role in saving the life of an Airman who had been severely

injured during an improvised explosive device (IED) attack on their convoy. The Government points out the dangers brought about by the appellant's decision to take important combat equipment out of the hands of military members or contractors in Iraq and place them into the hands of civilian buyers in the United States, as well as his prior nonjudicial punishment for misuse of his Government travel card and his use of marijuana.

We have given individualized consideration to this particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all other matters contained in the record of trial. The appellant's actions in Iraq during the IED attack were heroic. However, the appellant engaged in a course of conduct that included stealing controlled items used by his comrades for combat operations, shipping them to the United States, and then successfully trading them to a civilian without any consideration on how the items would be utilized by that civilian. Considering the appellant and his record of service, his misconduct and the other matters in the record of trial, we do not find his approved sentence, including the bad-conduct discharge, to be inappropriately severe.

*Conclusion*

The approved findings and sentence are correct in law and fact and no error prejudicial to the substantial rights of the appellant occurred.[*] Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the findings and sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court

[*] Though not raised as an issue on appeal, 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)). *See also United States v. Harvey*, 64 M.J. 13, 24 (C.A.A.F. 2006); *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002).