UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant BILL J. SMITH
United States Air Force

ACM 35832

31 January 2006

Sentence adjudged 10 December 2003 by GCM convened at Tyndall Air Force Base, Florida. Military Judge: W. Thomas Cumbie.

Approved sentence: Dishonorable discharge, confinement for 2 years, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Major Terry L. McElyea, Major Andrew S. Williams, Major Sandra K. Whittington.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Michelle M. McCluer, and Clayton O'Connor (legal intern).

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error (including the affidavit filed by the appellant) and the government's reply thereto. The appellant was convicted, in accordance with his pleas, of maiming his wife's right ear by slamming her head into a wall, metal bed frame, and bathtub, in violation of Article 124, UCMJ, 10 U.S.C. § 924. Officer members sitting as a general court-martial sentenced the appellant to a dishonorable discharge, confinement for 2 years, forfeiture of all pay and allowances, and reduction to E-1. On 5 February 2004, the convening authority approved the findings and sentence as adjudged, except for the forfeiture of all pay and allowances.

The appellant alleges that his trial defense counsel were ineffective because they failed to challenge the president of the court-martial for cause.[1] Finding no error, we affirm. We review claims of ineffective assistance of counsel de novo. *United States v. Key*, 57 M.J. 246, 249 (C.A.A.F. 2002). In order to successfully raise a claim of ineffective assistance of counsel, an appellant must show deficient performance and prejudice. *Strickland v. Washington,* 466 U.S. 668, 687 (1984); *Key*, 57 M.J. at 249. Counsel are presumed to be competent. *United States v. Lee*, 52 M.J. 51, 52 (C.A.A.F. 1999). Applying the factors set forth in *United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997), we conclude that we can resolve the assignment of error based on the record and the appellate filings. After examining the record and the appellate filings, we find trial defense counsels' performance was not deficient. Indeed, there was no basis to challenge the president of the court-martial for actual or implied bias. *See* Rule for Courts-Martial 912(f)(1); *see also United States v. Travels*, 47 M.J. 596 (A.F. Ct. Crim. App. 1997), *aff'd*, 49 M.J. 125 (C.A.A.F. 1998).[2] We find the appellant has failed to meet his burden of proving ineffective assistance of counsel. *See Strickland*, 466 U.S. at 687. This assignment of error is without merit.[3]

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.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

[1] This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).
[2] We note trial defense counsel challenged two other court members for cause and these challenges were granted. Trial defense counsel also peremptorily challenged another member.
[3] We commend the trial defense counsel for their vigorous and hard-fought representation of the appellant throughout his court-martial.