

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

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**UNITED STATES**

**v.**

**Staff Sergeant NICHOLAS J. SOBCZYK  
United States Air Force**

**ACM S31789**

**17 August 2011**

Sentence adjudged 19 February 2010 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: Don M. Christensen.

Approved sentence: Bad-conduct discharge, confinement for 2 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Eric N. Eklund; Lieutenant Colonel Gail E. Crawford; and Major Michael S. Kerr.

Appellate Counsel for the United States: Major Matthew F. Blue and Gerald R. Bruce, Esquire.

Before

**BRAND, GREGORY, and WEISS  
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

A special court-martial composed of officer members convicted the appellant in accordance with his pleas of one specification of wrongfully using cocaine on divers occasions and one specification of making a false official statement, in violation of Articles 107 and 112a, UCMJ, 10 U.S.C. §§ 907, 912a. The court sentenced him to a bad-conduct discharge, confinement for 2 months, and reduction to the grade of E-1. The convening authority approved the sentence adjudged. The appellant assigns as error that his sentence is inappropriately severe.<sup>1</sup>

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<sup>1</sup> This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (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); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004), *aff'd in part and rev'd in part on other grounds*, 60 M.J. 368 (C.A.A.F. 2004).

The appellant entered active duty in 2003 and was assigned as a heavy equipment operator with the Civil Engineering Red Horse Squadron. He deployed four times, twice to Iraq and twice to Afghanistan, and earned positive recognition during each deployment. He admitted during the plea inquiry to using cocaine “four or five times” with two other staff sergeants at an off-base residence between March and June 2009. A urinalysis specimen taken shortly after the last use was positive for cocaine. He falsely denied more than one use when interviewed by law enforcement.

In sentencing, the appellant described multiple personal problems during the time of his cocaine use, including an early return from deployment in March 2009 because his wife had post-partum depression and his house was in foreclosure. In arguing the inappropriateness of a bad-conduct discharge, the appellant cites his deployments, positive service record, and family and financial problems. While the matters cited by appellant are appropriate considerations in clemency, they do not show that his sentence is inappropriately severe. These matters were properly before the court-martial that sentenced him as well as the convening authority that approved the sentence. Having considered the sentence de novo in light of the character of this offender, the nature and seriousness of his offenses, and the entire record of trial, we find the appellant’s sentence appropriate.

### *Conclusion*

We conclude that the findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.<sup>2</sup> Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

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<sup>2</sup> We note that, while the Court-Martial Order (CMO) identifies the plea and finding with regard to Additional Charge II, it fails to identify the plea and finding to the specification of the charge. We order the promulgation of a corrected CMO.

Accordingly, the findings and the sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a horizontal line.

STEVEN LUCAS  
Clerk of the Court