UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman REBECCA H. SPENCER
United States Air Force

ACM S31547

21 April 2009

Sentence adjudged 16 September 2008 by SPCM convened at Scott Air Force Base, Illinois. Military Judge: Le Zimmerman.

Approved sentence: Bad-conduct discharge, confinement for 2 months, forfeiture of $898.00 pay per month for 2 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Raymond J. Hardy, Jr., Major Shannon A. Bennett, and Captain Phillip T. Korman.

Appellate Counsel for the United States: Major Jeremy S. Weber.

Before

HEIMANN, HELGET, and PLACKE
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

HEIMANN, Senior Judge:

In accordance with her plea, the appellant was found guilty of divers uses of heroin, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A panel of officers sentenced her to a bad-conduct discharge, confinement for two months, forfeiture of $898.00 pay per month for two months, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged. The appellant contends the bad-conduct discharge is inappropriately severe.*

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

The appellant was an exceptional duty performer with no prior disciplinary record. At trial, in addition to her father, a retired Army drill sergeant, she had two current senior supervisors testify as to her character, her superb duty performance, and her potential for rehabilitation. On appeal she argues that based upon this evidence, coupled with her admission of guilt and her demonstrated remorse, the bad-conduct discharge is inappropriately severe.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005); *United States v. Christian*, 63 M.J. 714, 717 (A.F. Ct. Crim. App. 2006). 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). We have a great deal of discretion in determining whether a particular sentence is appropriate but 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).

Everything the appellant argues is true. But this is only half the question. By her own admissions she became addicted to heroin and admitted four separate uses of heroin over a period of fifty-plus days. Most significant of these admitted heroin uses are the last two, which occurred after she was aware that her urine had tested positive for heroin. Despite this knowledge, she continued to use for another thirty days. We believe this fact alone warrants a bad-conduct discharge even in the face of an otherwise positive record.

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.

OFFICIAL

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