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

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**UNITED STATES**

**v.**

**Second Lieutenant KRISTOFFER R. TALLEY**
**United States Air Force**

**ACM 35821**

**31 October 2005**

Sentence adjudged 23 October 2003 by GCM convened at Schriever Air Force Base, Colorado. Military Judge: Kurt D. Schuman (sitting alone).

Approved sentence: Dismissal and confinement for 7 months.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Andrew S. Williams, and 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, and the government's reply. We find the appellant's sentence appropriate. Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires us to affirm only as much of the sentence as we find correct in law and fact and that we determine, on the basis of the entire record, should be approved. In determining sentence appropriateness, we must ensure that justice is done and the appellant receives the punishment he deserves. We do not exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). Instead, we discharge this responsibility by giving "individualized consideration" to the appellant, including the nature and seriousness of the offenses and the character of his service. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The appellant contends that his dismissal is too severe when compared to the punishments other Air Force officers have recently received for similar offenses. In support of his argument he cites a variety of cases, however we do not find them to be closely related to his case. When asserting sentence inappropriateness, the appellant has the burden of identifying "closely related" cases having "highly disparate" sentences. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999). We find the appellant has failed to meet that burden. Furthermore, at trial the appellant authorized his defense counsel to argue for a punitive discharge in lieu of lengthy confinement. The appellant may not "have his cake and eat it too" by now asserting the sentence he requested is too severe.

The evidence shows that the appellant pursued and had sexual intercourse with a female staff sergeant who was so drunk that she suffered an alcohol-induced blackout of her memory. He also fraternized with three other junior enlisted females. The military judge sentenced him to a dismissal and confinement for ten months. The convening authority reduced the confinement to seven months. Under the facts and circumstances of this case, we find the approved sentence is appropriate.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court