UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Master Sergeant DAVID P. TAYLOR
United States Air Force

ACM 38137

19 September 2013

Sentence adjudged 6 March 2012 by GCM convened at Hurlburt Field, Florida. Military Judge: W. Thomas Cumbie (sitting alone).

Approved Sentence: Dishonorable discharge, confinement for 3 years, and reduction to E-1.

Appellate Counsel for the Appellant: Major Matthew T. King and Major Grover H. Baxley.

Appellate Counsel for the United States: Colonel Don M. Christensen; Colonel Thomas A. Monheim; and Gerald R. Bruce, Esquire.

Before

ORR, HARNEY, and MITCHELL
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

HARNEY, Senior Judge:

A military judge sitting alone convicted the appellant, in accordance with his pleas, of one specification of aggravated sexual assault of a child, and two specifications of aggravated sexual abuse of a child, in violation of Article 120, UCMJ, 10 U.S.C. § 920.[1] The military judge sentenced the appellant to a dishonorable

[1] Specification 1 charged the appellant with engaging in a sexual act with a person who had attained the age of 12 years, but had not attained the age of 16 years, by penetrating the victim's vulva with his penis, in violation of Article 120, UCMJ, 10 U.S.C. § 920. Specifications 2 and 3 charged the appellant with engaging in lewd acts with a person who had attained the age of 12 years, but had not attained the age of 16 years, by penetrating the victim's

discharge, confinement for 4 years, and reduction to E-1. Pursuant to a pretrial agreement (PTA), the convening authority approved the dishonorable discharge and reduction to E-1, but approved only 3 years of confinement.

On appeal, the appellant argues the punitive discharge is inappropriately severe.[2] We disagree and affirm the findings and sentence.

Background

All specifications of the charge relate to a single encounter, which included vaginal and oral sex, involving a 15-year-old female, LT. At the time LT was 33 days shy of her 16th birthday, while the appellant was a 37-year-old Master Sergeant. During the sentencing portion of the trial, the Government called no witnesses, but introduced several documents, including a picture of the appellant with LT, Facebook messages between the appellant and LT, a pretext phone call between the appellant and LT, and a stipulation of expected testimony of LT.

In his sentencing argument, trial counsel highlighted the age disparity between the appellant and LT, how the appellant met LT when she was 13 years old, and how he continued to interact with her via text messages and Facebook messages over the course of two years. During the pretext phone call, the appellant encouraged LT to keep his phone number secret from her parents, invited her to spend time with him in Florida, and stated that he was trying to figure out a way to do it [engage in sexual intercourse] with her again. He was adamant that he did not regret talking to her and, by implication, having sex with her. While the appellant did admit that he minded "a little bit" that she was 15 years old when they had sex, he liked her and thought she was "cool."

Sentence Severity

The appellant argues that aside from the incidents leading to his court-martial, his special operations career was exceptional. He points to his "firewall 5" Enlisted Performance Reports over his 20-year career, his deployments in support of Operation Provide Promise and Operation Enduring Freedom, and his extensive awards and decorations. Moreover, the appellant argues, the Government introduced no evidence in aggravation nor attempted to demonstrate any victim impact. He asks that we impose a bad-conduct discharge in lieu of the dishonorable discharge, or provide other appropriate sentence relief.

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vulva with his tongue and touching his penis to her mouth, in violation of Article 120, UCMJ. A fourth specification alleging the appellant engaged in sexual contact, to wit: touching the inner thigh of a female without her consent, in violation of Article 120, UCMJ, was dismissed after arraignment, pursuant to a pretrial agreement.

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

This Court "may affirm only . . . 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 review sentence appropriateness de novo, employing "a sweeping congressional mandate to ensure 'a fair and just punishment for every accused.'" *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (quoting *United States v. Bauerbach*, 55 M.J. 501, 504 (Army Ct. Crim. App. 2001). We make such determinations considering the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial. *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). Although we are accorded great discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

We have reviewed the record of trial, giving individualized consideration to this appellant on the basis of the nature and seriousness of his offenses and his character, to include his extensive military record. In our opinion, the appellant violated the standards of conduct expected of senior noncommissioned officers in the United States Air Force. Contrary to the appellant's assertion, we find it immaterial that trial counsel did not elicit victim impact evidence or present evidence in aggravation at sentencing. The record contains sufficient evidence to support the appellant's sentence. For example, the record shows the appellant engaged in a two-year grooming process with LT. Starting when she was 13 years old, he began to compliment her and build her self-esteem. Although LT was admittedly sexually active, the appellant was 22 years her senior. Additionally, LT's parents contacted the appellant on multiple occasions, telling him to cease his contact with LT, but he continued to foster and build the relationship. More than that, he actively worked to subvert LT's parents' authority over her by encouraging her to act contrary to their wishes and to hide their relationship. He admitted to LT that while there was an issue with her age when they engaged in sexual intercourse, he steadfastly denied regretting his actions. Finally, the appellant negotiated a PTA from which he benefited. Thus, we find that the approved and adjudged sentence in this case, including the dishonorable discharge, was appropriate, was within the discretion of the convening authority, and not 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 approved findings and sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court