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

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**UNITED STATES**

**v.**

**Staff Sergeant RONALD D. THOMAS, JR.**
**United States Air Force**

**ACM 37660**

**06 July 2011**

Sentence adjudged 20 January 2010 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Terry O'Brien (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 5 years, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford and Lieutenant Colonel Darrin K. Johns.

Appellate Counsel for the United States: Colonel Don M. Christensen, Major Megan E. Middleton, and Gerald R. Bruce, Esquire.

Before

BRAND, GREGORY and ROAN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of military judge alone convicted the appellant in accordance with his pleas of one specification each of assault consummated by a battery, aggravated assault, burglary, and kidnapping in violation of Articles 128, 129, and 134 UCMJ, 10 U.S.C. §§ 928, 929, 934. Pursuant to a pretrial agreement that capped confinement at 5 years, the government did not present evidence on a second aggravated assault specification. The convening authority approved the adjudged sentence of reduction to the grade of E-1, confinement for 5 years, and a dishonorable discharge. The

appellant argues that his sentence is inappropriately severe.[1] Finding no error prejudicial to the substantial rights of the appellant, we affirm.

*Background*

The appellant and his wife separated in December 2008. He moved out of their shared apartment, took his name off the lease, and surrendered his key after making an unauthorized copy. In January 2009, he used the unauthorized key to enter the apartment while his wife was out and installed computer spyware in an effort to obtain proof that his wife was having an affair. Apparently suspicious, his wife changed the locks on 30 January 2009.

The next day, the appellant discovered the locks had been changed when he tried to again enter the apartment with the copied key. Undaunted, he returned two days later with a battery powered saw and cut a hole in the sheetrock wall between an open storage shed and an air conditioner vent that opened into the apartment's living area. He planned to use this method of entry to check the status of the spyware he had placed on his wife's computer.

On the evening of 3 February 2009, he received reports on his computer from the spyware program that tended to confirm for him that his wife was having an affair. He went to the apartment around 2300 hours to confront her. He climbed through the storage shed and into the air conditioning vent where he could hear his wife talking on the phone. He busted through the vent into the living room. His wife tried to run out but he grabbed her, put his hand over her mouth, and confronted her about the alleged affair.

The appellant became even angrier when he pushed his wife into the bedroom closet and discovered that all of his belongings had been packed away. During the course of the episode, he struck her on the arm and choked her until she almost passed out. His wife eventually escaped through the back door while the appellant was distracted in the living room. A neighbor heard her screaming and called 9-1-1. The appellant fled and was arrested a short time later by civilian police.

*Sentence Appropriateness*

The appellant asserts that the sentence is inappropriately severe given his remorse and service record. In reviewing sentence appropriateness, we "may affirm only such findings of guilty and 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 assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the

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

offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007). We have a great deal of discretion in determining whether a particular sentence is appropriate, but 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).

The appellant's argument is essentially a clemency request that does not show the sentence is inappropriately severe. The appellant's wife testified concerning the debilitating impact of the appellant's dangerous behavior on both her and their young daughter. In his statement to the court, the appellant acknowledged the "pain and devastation" he inflicted on his wife that "robbed her feeling of safety and security that everyone should feel in their home." The lengthy planning and execution of his crimes—that began with making an unauthorized key and ended in a forced entry to commit an assault—show that the appellant's crimes were not the result of momentary jealous rage but deliberate criminal intent in complete disregard for the safety of his wife and child. The appellant's remorse and commendable service record do not lessen the seriousness of his crimes nor show that the sentence is inappropriate. Having given individualized consideration to this particular appellant, the nature of the offenses, his service record which includes deployments to Kuwait and Iraq, and all other matters in the record of trial, we hold that the approved sentence is not inappropriately severe.

*Waiver of Motion*

In his pretrial agreement the appellant waived all waivable motions. In discussing this provision with the appellant the military judge explained that some motions cannot be waived, such as failure to state an offense. When the military judge later asked counsel for the factual basis of any specific motions covered by this term of the pretrial agreement, defense counsel stated that "the factual basis would have been a motion to dismiss Charge II and its Specification for failure to state an offense." Defense counsel does not elaborate on the factual basis, and neither the military judge nor counsel appear to have recognized that this motion was one correctly described by the military judge as non-waivable. Therefore, we will consider the issue of whether Charge II alleges an offense.

Charge II alleges burglary in violation of Article 129, UCMJ. The specification properly alleges burglary and includes each required element. Further, the plea inquiry and stipulation of fact show that the facts alleged in the specification correctly describe the offense of burglary. Having independently reviewed Charge II, we find that it properly alleges the offense of burglary in violation of Article 129, UCMJ, and see no basis for concluding otherwise.

*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; *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
Clerk of the Court