UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant ANTWAN L. THORBS
United States Air Force

ACM 35131

24 January 2005

Sentence adjudged 3 April 2002 by GCM convened at Scott Air Force Base, Illinois. Military Judge: James L. Flanary (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 6 years, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Maria A. Fried, and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Lance B. Sigmon.

Before

STONE, GENT, and BILLETT
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

BILLETT, Judge:

The appellant was convicted, in accordance with his plea, of wrongfully possessing approximately 31 pounds of marijuana with the intent to distribute, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A general court-martial comprised of a military judge sentenced the appellant to a dishonorable discharge, confinement for 8 years, and reduction to the grade of E-1. Pursuant to a pretrial agreement, the convening authority approved only so much of the sentence as included a dishonorable discharge, confinement for 6 years, and reduction to the grade of E-1. On appeal, the appellant

alleges that his sentence is inappropriately severe.[1] We find no merit in this argument and affirm.

Background

On 18 March 2001, the appellant flew from St. Louis, Missouri, to Houston, Texas, for an undisclosed reason and returned to St. Louis approximately five hours later. On 21 March 2001, the appellant rented a car for a civilian friend, Mr. Kevyn Taylor, and told Mr. Taylor to drive the car to Houston, to purportedly work as a performer for a music business owned and operated by the appellant. On the way to Houston, Mr. Taylor was stopped by police in Louisiana and cited for speeding and driving on a suspended license.

On 22 March 2001, the appellant called his supervisor and requested two days of leave. The appellant told his supervisor that his mother had suffered a heart attack in Kentucky and he needed to be with her. His supervisor granted him his leave request. By 1250 hours that same day, the appellant was at the St. Louis airport buying a one-way ticket to Houston. Although his trip to Houston had no military purpose, the appellant took his green, military-style duffle bag and various uniform items, although not enough to make a complete uniform.

Once in Houston, he met Mr. Taylor, who had the rental car, and made preparations to drive back to St. Louis. According to the appellant, Mr. Taylor asked him to transport several bags back to St. Louis for him. When asked what was in the bags, Mr. Taylor told him that they contained marijuana. The appellant maintained that, as he left alone for St. Louis, he was unaware of the quantity of marijuana he was transporting. According to the appellant, as he was driving, he noticed the strong odor of marijuana coming from the back of the car, which eventually prompted him to stop the car and inspect the bags in the trunk. Purportedly, that was when he first became aware of the quantity of marijuana he was transporting.

While traveling through Oklahoma City on the morning of 23 March 2001, the appellant was stopped by a local police officer for excessive weaving in traffic. He had items of military clothing hanging up in the passenger compartment of the car and in the green duffel bag in the trunk. The appellant told the officer he was driving from a training course in San Antonio and had been driving all night to visit his sick mother. After speaking with the appellant, the officer noticed a strong odor of what he believed to be marijuana. Based on the odor, the officer asked the appellant for consent to search his vehicle, which the appellant gave.

[1] This assignment of error was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Initially, the officer asked the appellant if he had any luggage. The appellant stated that he had only a briefcase. Upon opening the trunk, however, the officer found the green, military-style duffel bag with the appellant's name on it. Inside the duffel bag the officer found military clothing items and two trash bags, one inside the other. In the inner trash bag were two large "bricks" of marijuana, weighing a total of approximately 31 pounds. The trash bags were surrounded by scented dryer sheets, items commonly used to mask the odor of marijuana. The appellant initially denied ownership of the duffel bag, then later admitted ownership, but denied he was using it at the time and denied any prior knowledge of illegal substances in the car. The officer also found three bundles of money in the passenger compartment of the appellant's rental car. Two of the rubber-banded bundles contained 50 twenty-dollar bills and totaled $1,000 each. The third bundle contained $41 in one-dollar bills.

Subsequent laboratory analysis identified a fingerprint and a palm print on the surface of the inner bag containing the marijuana. Both prints matched the appellant's. Civilian authorities and Air Force Office of Special Investigations agents were successful in contacting Mr. Taylor subsequent to the appellant's apprehension. Mr. Taylor agreed to wear a hidden recording device and engage the appellant in a pretext phone call to ask for a meeting between himself and the appellant. The appellant agreed to meet with Mr. Taylor. During the subsequent recorded conversation, Mr. Taylor and the appellant talked about coordinating their stories on how they were going to handle questioning by the authorities.

At trial, the appellant readily admitted to the facts necessary to support his guilty plea to wrongful possession of marijuana with intent to distribute, but asserted that his initial involvement and knowledge were minimal and that he was transporting the marijuana only as an accommodation to his civilian friend. The appellant repeats this accommodation theory on appeal and maintains he planned only to turn the marijuana over to his friend when he reached St. Louis. He asserts that the military judge concluded that he was a "drug kingpin" and that this conclusion had no basis in the record and resulted in a sentence that was inappropriately severe.

Law

This Court "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). In order to determine the appropriateness of the sentence, this Court must consider the particular appellant, the nature and seriousness of the 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).

Analysis

Our review of the record leads us to conclude that there was more than enough evidence introduced at trial to discredit the appellant's "mere accommodation" theory. This evidence includes numerous falsehoods and factual inconsistencies attributed to the appellant, such as: suspect trips to Houston from St. Louis, either taken or arranged by the appellant shortly before he traveled to Houston to retrieve the rental car; the use of items of an incomplete military uniform as a ruse in an apparent attempt to divert suspicion while the appellant was on the road; and the degree of control exerted by the appellant over events connected with the incident. This evidence created a record where the military judge could reasonably infer that the appellant's involvement in the transaction was significantly deeper than he would admit to. It was not necessary for the military judge to infer that the appellant was a "drug kingpin" in order to make the sentence adjudged appropriate. We find the sentence reasonable and not inappropriately severe given the amount of marijuana involved and the extent of the appellant's involvement that was proved and that could reasonably be inferred from the evidence.

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

ANGELA M. BRICE
Clerk of Court