UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JARED R. TREVENA
United States Air Force

ACM 34930

20 February 2004

Sentence adjudged 13 December 2001 by GCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Mark R. Rupert (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Robin S. Wink, Major Terry L. McElyea, and Captain Antony B. Kolenc.

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

Before

BRESLIN, ORR, and PETROW
Appellate Military Judges

PER CURIAM:

The appellant pled guilty to one specification of wrongful use of ecstasy on divers occasions and one specification of wrongful use of marijuana in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A general-court martial, consisting of a military judge sitting alone, accepted his pleas and sentenced the appellant to a bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the adjudged sentence.

The appellant now alleges that his sentence is inappropriately severe compared to the sentence received by Airman First Class (A1C) Dean M. Lowery. An appellant must demonstrate that the cited case is closely related and that the sentences are "highly

disparate." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999). If this burden is met then it is incumbent upon the government to show a "rational basis" for the disparate sentences. *Id.* The responsibility for determining sentence appropriateness is within the sound discretion of the courts of criminal appeals, subject to the review of our superior court on the "narrow question of whether there has been an 'obvious miscarriage of justice or abuse of discretion.'" *United States v. Sothen*, 54 M.J. 294, 296 (C.A.A.F. 2001) (quoting *Lacy*, 50 M.J. at 288 (quoting *United States v. Dukes*, 5 M.J. 71, 73 (C.M.A. 1978))).

We find the appellant has not met his burden of demonstrating the close relation between his case and that of A1C Lowry. Significantly, the appellant was found guilty of and sentenced for divers uses of ecstasy and a single use of marijuana, whereas A1C Lowry was found guilty of and sentenced for a single use of ecstasy and a single use of marijuana. Even if the cases are "closely related" the difference in the number of uses provides a cogent reason for the disparity in the sentences.

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

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator