UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class PHILLIP A. WALKER II
United States Air Force

ACM S30402

29 August 2005

Sentence adjudged 9 April 2003 by SPCM convened at Eglin Air Force Base, Florida. Military Judge: Thomas G. Crossan, Jr. (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, forfeiture of $767.00 pay per month for 9 months, and reduction to E-1.

Appellate Counsel for Appellant: Major L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Major John C. Johnson, and Spencer R. Fisher (legal intern).

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

JACOBSON, Judge:

Contrary to his pleas, the appellant was found guilty of one specification of conspiracy and one specification of burning with intent to defraud in violation of Articles 81 and 134, UCMJ, 10 U.S.C. §§ 881, 934. The military judge sitting alone as a special court-martial sentenced the appellant to a bad-conduct discharge, confinement for 9 months, forfeiture of $900.00 pay per month for 9 months, and reduction to E-1. The convening authority approved the findings and sentence as adjudged, with the exception of the forfeitures, which he reduced to $767.00 pay per month for 9 months. The appellant asserts that his sentence is inappropriately severe, especially in light of his co-conspirator's sentence. Finding no error, we affirm the findings and sentence.

The appellant's co-conspirator, Airman First Class (A1C) Ellis Hall, was found guilty, pursuant to his pleas, of dereliction of duty (unauthorized use of his government travel card), making a false official statement, and burning his car with intent to defraud

in violation of Articles 92, 107, and 134, UCMJ, 10 U.S.C. §§ 892, 907, 934, and was sentenced by a military judge sitting alone as a general court-martial to a bad-conduct discharge, confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1. Pursuant to a pretrial agreement, the convening authority approved only 14 months of confinement along with the remainder of the adjudged sentence.

The appellant asks that we find his sentence inappropriately severe because it "is so close to A1C Hall's sentence, despite A1C Hall's much greater involvement [in the destruction of the car] and his additional criminal offenses." This court may take into account disparities between sentences adjudged for similar offenses when determining sentence appropriateness. *United States v. Wacha*, 55 M.J. 266, 267 (C.A.A.F. 2001). However, noting that A1C Hall actually received twice as much adjudged confinement as the appellant, we decline to engage in an exercise of sentence comparison.[1]

This Court has the authority to review sentences pursuant to Article 66(c), UCMJ, 10 U.S.C. § 866(c), and to reduce or modify sentences we find inappropriately severe. Generally, we make this determination in light of the character of the offender and the seriousness of his offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise 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 was a co-conspirator in a crime that could have resulted in serious injury or death to responding emergency personnel and extensive property damage if the fire had spread. Instead of stopping A1C Hall or reporting the imminent crime to authorities when he heard about it the previous day, the appellant facilitated the crime by providing A1C Hall with support, transportation, and the means for disposing of the evidence. Taking into account all the facts and circumstances, we do not find the appellant's sentence inappropriately severe. *Snelling*, 14 M.J. at 268. To the contrary, after reviewing the entire record, we find that the sentence is appropriate for this offender and his offenses. *See United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395.

[1] A1C Hall obtained relief from the convening authority subsequent to his agreement to plead guilty. The appellant concedes that his sentence is not "highly disparate" from A1C Hall's because A1C Hall's sentence exceeded his own.

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