

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Staff Sergeant GENE Z. WARD
United States Air Force**

ACM 35877

18 November 2005

Sentence adjudged 26 January 2004 by GCM convened at Ramstein Air Base, Germany. Military Judge: Thomas W. Pittman (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 42 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Major Sandra K. Whittington, Major Karen L. Hecker, and Captain David P. Bennett.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain C. Taylor Smith.

Before

**BROWN, MOODY, and FINCHER
Appellate Military Judges**

PER CURIAM:

The appellant was tried by a military judge sitting as a general court-martial at Ramstein Air Base, Germany. In accordance with his pleas, he was convicted of committing sodomy with SNJ, a child under 16 years of age; committing an indecent act upon the body of SNJ, a female under 16 years of age, by fondling and kissing her breasts with the intent to arouse and gratify his sexual desires; and committing an indecent act upon the body of SNJ, a female under 16 years of age, by touching her vagina with his finger, with the intent to arouse and gratify the sexual desires of the appellant and SNJ, in violation of Articles 125 and 134, UCMJ, 10 U.S.C. §§ 925, 934. The military judge sentenced him to a dishonorable discharge, confinement for 42 months, and reduction to E-1. The convening authority approved the sentence as adjudged.

The appellant contends his sentence is too severe and asks this Court to reduce his confinement to 30 months. Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires this Court to approve only that sentence, or such part of, or amount of the sentence, as it finds correct in law and fact and determines should be approved. *United States v. Amador*, 61 M.J. 619, 626 (A.F. Ct. Crim. App. 2005). The determination of sentence appropriateness “involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves.” *Id.* (quoting *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988)).

Sentence appropriateness is judged by individualized consideration of the particular appellant on the basis of the nature and seriousness of the offenses, the appellant’s record of service, the character of the offender, 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. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959); *Amador*, 61 M.J. at 626.

We do not find appellant’s sentence inappropriately severe. We acknowledge the appellant was an excellent duty performer who suffers from alcoholism and has taken commendable steps to attempt to conquer this disease and maintain his sobriety. However, we also note that the victim of the appellant’s misconduct is his stepdaughter, who was 14 and 15 years old at the time the appellant victimized her. In addition, the evidence is uncontroverted that the appellant paid SNJ \$20 after he kissed and fondled her breasts, and \$50 after he touched her vagina with his finger and performed cunnilingus upon her. Moreover, as a result, at least in part of the appellant’s actions, SNJ attempted to commit suicide.

We have given individualized consideration to this particular appellant and carefully reviewed the facts and circumstances of this case. We are convinced the sentence approved is appropriate.

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