UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic GREGORY J. WATKINS
United States Air Force

ACM S31117

11 October 2007

Sentence adjudged 7 April 2006 by SPCM convened at Spangdahlem Air Base, Germany. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 75 days.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Captain Christopher L. Ferretti.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Major Kimani R. Eason, and Captain Donna S. Rueppell.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of failure to go, use of marijuana, and being incapacitated for the proper performance of his duties in violation of Articles 86, 112a, and 134, UCMJ, 10 U.S.C. §§ 886, 912a, 934. The military judge, sitting alone as a special court-martial, sentenced the appellant to a bad-conduct discharge and confinement for 75 days. The convening authority approved the findings and sentence as adjudged.

The appellant asserts that his sentence is inappropriately severe as a result of the trial counsel improperly focusing her argument on the appellant's disciplinary history rather than on the offenses to which he pled guilty. Finding no merit in this argument, we affirm the findings and sentence.

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," *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999), but does not authorize us to engage in an exercise of clemency. *United States v. Healy*, 26 M.J. 394 (C.M.A. 1986).

The appellant argues that the trial counsel, in her sentencing argument, inappropriately focused on the appellant's disciplinary history rather than the three specifications which were the subject of the court-martial. We disagree. Prior to his trial, the appellant had a summary court-martial conviction, two nonjudicial punishment actions under Article 15, UCMJ, 10 U.S.C. § 815, two letters of reprimand, and one record of individual counseling in his personnel file. Additionally, his enlisted performance report was very unfavorable. The trial counsel properly commented on this information to support her argument that the government's attempts to rehabilitate the appellant had failed and that a bad-conduct discharge was an appropriate punishment. We find the trial counsel's comments are in accord with the guidelines for sentencing arguments found in Rule for Courts-Martial (R.C.M.) 1001(g) and were therefore not improper.

Significantly, trial defense counsel did not object to the trial counsel's comments. Absent objection by trial defense counsel, we review under a plain error standard, and find none. *See* R.C.M. 1001(g); *United States v. Ramos*, 42 M.J. 392, 397 (C.A.A.F. 1995). The trial defense counsel did, however, immediately present a well-reasoned counterargument during sentencing, reminding the military judge that it was his job "to find the appropriate punishment for these crimes, not for the last year." We are confident that this highly seasoned military judge, while appreciative of the reminder, was well aware of his duties and responsibilities in fashioning an appropriate sentence. As our superior court has often noted, "military judges are presumed to know the law and to act according to it." *United States v. Prevatte*, 40 M.J. 396, 398 (C.M.A. 1994). Accordingly, if the trial counsel's comments had been improper, we would find no prejudice.

As for the sentence itself, 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. *United States v. Baier*, 60 M.J. 382 (C.A.AF. 2005); *Healy*, 26 M.J. at 395.

Conclusion

The findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of the Court