UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman KODY T. WEEKS
United States Air Force

ACM 37535 (f rev)

03 August 2012

Sentence adjudged 20 June 2009 by GCM convened at Langley Air Force Base, Virginia. Military Judge: Stephen R. Woody (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 14 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford; Major Phillip T. Korman; Major Daniel E. Schoeni; Major Grover H. Baxley; Major Shannon A. Bennett; and Major Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Major Scott C. Jansen; Major John M. Simms; and Gerald R. Bruce, Esquire.

Before

ORR, WEISS, and CHERRY
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

In accordance with his pleas, the appellant was convicted by a military judge alone in a general court-martial of one specification of disobeying a noncommissioned officer, one specification of violating a no-contact order, one specification of larceny, and one specification of forgery, in violation of Articles 91, 92, 121, and 123, UCMJ, 10 U.S.C. §§ 891, 892, 921, 923. The adjudged and approved sentence consists of a bad-conduct discharge, confinement for 14 months, and reduction to E-1.

This Court previously affirmed the findings and sentence. *United States v. Weeks*, ACM 37535 (A.F. Ct. Crim. App. 30 March 2011) (unpub. op.), *rev'd*, 71 M.J. 44 (C.A.A.F. 2011). Subsequently, the Court of Appeals for the Armed Forces set aside the findings of guilty to the forgery offense, dismissed Charge II and its Specification, affirmed the remaining charges and specifications, and remanded the record to this Court for reassessment of the sentence. *Weeks*, 71 M.J. at 49. Having reassessed the sentence, we affirm the appellant's sentence as adjudged.

Sentence Reassessment

Before reassessing a sentence, we must be confident "that, absent the error, the sentence would have been of at least a certain magnitude." *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002) (citing *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986)). A "dramatic change in the 'penalty landscape'" lessens our ability to reassess a sentence. *United States v. Riley*, 58 M.J. 305, 312 (C.A.A.F. 2003). Ultimately, a sentence can be reassessed only if we "confidently can discern the extent of the error's effect on the sentencing authority's decision." *United States v. Reed*, 33 M.J. 98, 99 (C.M.A. 1991). If we cannot determine that the sentence would have been at least of a certain magnitude, we must order a rehearing. *Doss*, 57 M.J. at 185 (citing *Sales*, 22 M.J. at 307).

At first blush, it might appear the penalty landscape drastically changed based on the maximum confinement the appellant faced before (in excess of 161 years) and after (6 years and 6 months) the set-aside of the forgery charge. However, a close review of the record does not support such a characterization. Although the forgery "mega specification" significantly drove up the maximum punishment in terms of potential confinement, the gravamen of the case against the appellant is the appellant's theft of funds from his cousin's bank account. And the bulk of the money taken, about $50,000.00, is alleged as part of the unaffected larceny charge and specification. In addition, in terms of confinement and punitive discharge, the trial counsel argued for only 24 months and a bad-conduct discharge – far less than the maximum authorized, even if compared to only the larceny charge and specification standing alone (5 years and a dishonorable discharge). Moreover, the adjudged sentence to confinement of 14 months is only 8 months greater than what the trial defense counsel argued was appropriate and is equal to the sentence cap on confinement agreed to by the appellant in the pretrial agreement.

Applying the facts set forth above, we find that we can discern the effect of the dismissed charge and specification and will reassess the sentence. Having reviewed the entire record, under the circumstances of this case and in consideration of the severity of the unaffected charges – especially the larceny charge wherein, on multiple occasions over a lengthy period of time, the appellant stole money from a relative totaling about

$50,000.00 – we are confident that the military judge would have imposed the same sentence of a bad-conduct discharge, confinement for 14 months, and reduction to E-1. *See Doss*, 57 M.J. at 185. We also find, on the basis of the entire record, that the reassessed sentence is appropriate. Article 66(c), UCMJ, 10 U.S.C. § 866(c).

Conclusion

Having previously affirmed the findings on the remaining charges and specifications, the sentence, as reassessed, is 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 sentence, as reassessed, is

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court