UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant CARL D. WILLIAMS
United States Air Force

ACM S30708

28 February 2006

Sentence adjudged 22 July 2004 by SPCM at Davis-Monthan Air Force Base, Arizona. Military Judge: Jack L. Anderson.

Approved sentence: Bad-conduct discharge and reduction to E-4.

Appellate Counsel for Appellant: Lieutenant Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, and Captain Anthony D. Ortiz

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Capt Kimani R. Eason.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of wrongful possession of marijuana with intent to distribute, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A special court-martial composed of officer members sentenced him to a bad-conduct discharge (BCD) and reduction to E-4. The convening authority approved the sentence as adjudged. On appeal, the appellant raises two assignments of error. First, he asserts that the military judge abused his discretion by failing to dismiss the charge and specification at trial.[1] Second, he claims that certain portions of the trial counsel's sentencing argument were improper. We find both arguments to be without merit and affirm the findings and sentence.

[1] This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

As to the first assignment of error, we have carefully reviewed the military judge's findings of fact and adopt them as our own. The appellant voluntarily entered into a pre-arraignment drug diversion program agreement with the Maricopa County District Attorney's Office and received the benefit of the bargain – his records were destroyed and he was not prosecuted by the State of Arizona. His bargain with civilian authorities, which resulted in charges not being filed against him, in no way precluded the Air Force from prosecuting the appellant. The appellant cites various paragraphs of Air Force Instruction (AFI) 51-201, *Administration of Military Justice* (3 Nov 2003), as authority for his position, but the plain language of those paragraphs does not support his argument. *See* AFI 51-201, ¶¶ 2.5.1, 2.5.2.

We also find that the trial counsel's sentencing argument was not improper. *See United States v. Baer*, 53 M.J. 235, 238 (C.A.A.F. 2000). The appellant claims that the portion of the argument that asked the members to adjudge a BCD was improper in that it characterized a punitive discharge as a separation or service characterization decision rather than a punishment decision. Trial defense counsel did not object to this segment of the trial counsel's argument, so we look for plain error. *United States v. Powell*, 49 M.J. 460, 464-65 (C.A.A.F. 1998).

We have carefully reviewed the trial counsel's comments in her sentencing arguments and do not find them to be improper. We have no doubt that the trial counsel's arguments were focused on punishing the appellant for his behavior and characterizing his service. *See United States v. Britt*, 48 M.J. 233, 234 (C.A.A.F. 1998); *United States v. Brown*, ACM 34336 (A.F. Ct. Crim. App. 2001) (unpub. op.). Further, we have reviewed the military judge's instructions to the members that explain the permissible punishment of punitive discharge and find them to be proper. The military judge provided preliminary instructions and, in response to the members' questions about punitive discharges, adequately supplemented those instructions. Any possible confusion on the part of the members was clearly addressed by the supplemental instructions. We are convinced that this group of intelligent and highly experienced Air Force officers[2] were aware that they could either punish the appellant with a BCD or punish him in other ways and leave the decision regarding whether the appellant would be allowed to remain in the Air Force to the appellant's commander.[3] *See United States v. Jenkins*, 54 M.J. 12, 20 (C.A.A.F. 2000). Therefore, taking into account the entire argument, the military judge's instructions, and the extensive experience of the court-martial panel, we find no error in the trial counsel's argument, plain or otherwise.

[2] All members of the panel that remained after the court was assembled indicated during voir dire that they had previously served as commanders either at the squadron, flight, or section level and had participated in disciplinary processes. Several indicated that they had served on court-martial panels before, including court-martials related to drug offenses.

[3] As Senior Judge Schlegel noted "We would also be engaging in fantasy-like behavior to ignore the reality that a punitive discharge does indeed characterize an accused's final period of service." *Brown*, unpub. op. at 3-4. We likewise decline to engage in such behavior.

The 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

ANGELA M. BRICE
Clerk of Court