

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Technical Sergeant JIMMY L. WILSON
United States Air Force**

ACM 37897

12 October 2012

Sentence adjudged 21 January 2011 by GCM convened at Moody Air Force Base, Georgia. Military Judge: Terry A. O'Brien.

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-2.

Appellate Counsel for the Appellant: Captain Nathan A. White.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Major Scott C. Jansen; Captain Brian C. Mason; Captain Erika L. Sleger; and Gerald R. Bruce, Esquire.

Before

STONE, GREGORY, and HARNEY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of officer and enlisted members convicted the appellant, contrary to his pleas, of one specification of violating a lawful order, in violation of Article 92 UCMJ, 10 U.S.C. § 892. The court sentenced the appellant to a bad-conduct discharge, confinement for three months, and reduction to the grade of E-2. The convening authority approved the sentence adjudged. The appellant assigns as error that he was subjected to cruel and unusual punishment by the conditions of post-trial confinement in a local civilian jail.

The appellant served his sentence to confinement in a local civilian jail contracted by the Air Force to house military prisoners because no local military confinement

facility existed. To avoid housing military prisoners with foreign nationals in violation of Article 12, UCMJ, 10 U.S.C. § 812, the civilian jail kept military prisoners in a single cell away from other civilian inmates. As explained by the Jail Administrator in an affidavit submitted with the appellant's clemency matters, this procedure was implemented because the jail was unable to identify those members of the civilian inmate population who were foreign nationals. He added that segregated military prisoners retain the same privileges as other inmates except for television. The appellant argues that his being held in isolation at the civilian jail constituted cruel and unusual punishment, in violation of Article 55, UCMJ, 10 U.S.C. § 855.

We review post-trial claims of cruel and unusual punishment de novo. *United States v. Lovett*, 63 M.J. 211, 215 (C.A.A.F. 2006). The appellant does not base his argument on some greater protection afforded by Article 55, UCMJ, and we agree that Eighth Amendment^{*} precedent controls this case. *United States v. Avila*, 53 M.J. 99, 101 (C.A.A.F. 2000) (the Supreme Court's interpretation of the Eighth Amendment applies to Article 55, UCMJ, analysis, absent circumstances showing legislative intent to provide greater protections under statute). To prevail on his claim under an Eighth Amendment analysis, the appellant must show: (1) that prison officials committed a sufficiently serious act or omission that denied him necessities, (2) that the act or omission resulted from a culpable state of mind reflecting deliberate indifference to his health and safety, and (3) that he has exhausted administrative remedies. *Lovett*, 63 M.J. at 215 (footnotes omitted) (emphasis added).

The appellant's claim fails because he has not established that jail officials were deliberately indifferent to his health and safety. To the contrary, the evidence shows that jail officials segregated military prisoners from the general population to prevent commingling with foreign nationals in violation of Article 12, UCMJ. Such routine conditions of administrative segregation do not constitute cruel and unusual punishment under an Eighth Amendment analysis absent deprivation of life's necessities or infliction of unnecessary pain. *Avila*, 53 M.J. at 101-02. Although the appellant questions the management decisions of the local jail, his questions are insufficient to show the required culpable state of mind. Having considered the issue de novo, we find that the appellant has not met his burden of showing that the circumstances of his post-trial confinement amounted to cruel and unusual punishment.

Conclusion

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);

* U.S. CONST. amend. VIII.

United States v. Reed, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and the sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a faint horizontal line.

STEVEN LUCAS
Clerk of the Court