UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class TAMIKKA R. WINTERS
United States Air Force

ACM S31013

31 May 2007

Sentence adjudged 3 October 2005 by SPCM convened at Maxwell Air Force Base, Alabama. Military Judge: Donald A. Plude.

Approved sentence: Bad-conduct discharge and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Major Anniece Barber, and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jamie L. Mendelson.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

PER CURIAM:

In accordance with her plea, the appellant was convicted of one specification of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Her adjudged and approved sentence consists of a bad-conduct discharge and reduction to the grade of E-1.

On appeal, the appellant asserts the following error:

> Whether the military judge erred to appellant's prejudice in limiting the defense's case in extenuation and mitigation by excluding evidence that the appellant's co-worker believed [the appellant] could continue to excel in the Air Force and [the appellant] has learned a valuable lesson from the mistake that could be deemed as a career ending decision.

During the Article 39(a)[1] pre-sentencing session, the trial counsel objected to two of the ten character statements from military members submitted by the trial

[1] Article 39(a), UCMJ, 10 U.S.C. § 839(a).

defense counsel. The specific language objected to in the first exhibit, was: "*In closing I would like to state that [the appellant] deserves another chance to excel in America's Air Force. It would be a terrible waste of a good Airman and* I honestly think she's learned a valuable lesson from [the] mistake *that could be deemed as a career ending decision*." (Emphasis added). In the second exhibit, the language was: "In closing I would like to state that [the appellant] could come work for me as a military or civilian member any time any place." After taking a recess to review *United States v Griggs*, 61 M.J. 402 (C.A.A.F. 2005),[2] the military judge sustained the objection to the italicized language in the first exhibit, and overruled the objection to the language in the second exhibit. He reasoned the language in the first exhibit was an opinion as to the appropriateness of a punitive discharge, while the language in the second was exactly the language our superior court addressed in *Griggs.*

We review a military judge's decision to exclude evidence for an abuse of discretion. *Id.* at 406 (citing *United States v McCollum*, 58 M.J. 323 (C.A.A.F. 2003)). A ruling based upon an erroneous view of the law constitutes an abuse of discretion. *Id.* There can be a thin line between an opinion that an accused should be returned to duty and the expression of an opinion regarding the appropriateness of a punitive discharge. *Id.* at 409.

The military trial judge in the case *sub judice* clearly applied the correct view of the law and did not abuse his discretion. Assuming *arguendo*, the military judge erred by excluding the evidence, the question then becomes whether the appellant was prejudiced by the error. *Id.* at 410. Unlike *Griggs*, this case involved language in one of ten character statements provided by military members on behalf of the appellant. Other much more favorable language was admitted. The error, assuming there was error, did not substantially influence the adjudged sentence. *See United States v. Boyd*, 55 M.J. 217, 221 (C.A.A.F. 2001).

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, 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

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator

[2] *Griggs* was decided one month before this court-martial took place.