UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman KARL E. WODA IV
United States Air Force

ACM 37132

26 November 2008

Sentence adjudged 03 October 2007 by GCM convened at McGuire Air Force Base, New Jersey. Military Judge: Stephen R. Woody (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 17 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, and Captain Ryan N. Hoback.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

JACKSON, Judge:

Pursuant to the appellant's pleas, a military judge sitting as a general court-martial convicted him of one specification of absence without leave,[1] two specifications of failing to obey a lawful order, one specification of wrongful divers distribution of

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[1] The appellant was charged with desertion. He pled and was found guilty of the lesser-included offense of being absent without leave. Pursuant to a pretrial agreement, the convening authority promised not to present evidence to prove the greater offense of desertion.

Oxycodone, and one specification of forgery, in violation of Articles 86, 92, 112a, and 123, UCMJ, 10 U.S.C. §§ 886, 892, 912a, 923. The military judge sentenced the appellant to a bad-conduct discharge, 17 months confinement, and reduction to E-1. The convening authority approved the findings and the sentence. On appeal the appellant asks the Court to disapprove his bad-conduct discharge or, in the alternative, grant other meaningful relief. The basis for his request is that he opines that his sentence to a bad-conduct discharge is inappropriately severe.[2] Finding no prejudicial error, we affirm.

Background

In October 2006, the appellant injured his back and was prescribed Oxycodone to help him manage his pain. On several occasions between October 2006 and March 2007, the appellant returned to his hometown. While there, he shared his Oxycodone with two friends, CJS and JJS. The appellant allegedly shared his Oxycodone to help CJS and JJS manage their back problems. On 22 March 2007, the appellant altered his Oxycodone prescription to make it appear he was prescribed 120 Oxycodone pills, wherein he had actually been prescribed 20 Oxycodone pills.

That same day, the appellant presented the forged prescription to a local pharmacist. The pharmacist suspected the prescription had been altered and refused to fill it. The pharmacist and the appellant's physician discussed the issue, and after confirming the prescription had been altered, the appellant's physician contacted the Air Force Office of Special Investigations (AFOSI). Later that day, the AFOSI took the appellant to their office for an interview. After a proper rights advisement, the appellant waived his rights and confessed to altering his Oxycodone prescription and to distributing Oxycodone to CJS and JJS.

On 25 April 2007, the appellant's commander, having received word of the appellant's Oxycodone distribution, ordered the appellant to have no contact with CJS and JJS. On 10 May 2007, the appellant received non-judicial punishment for being derelict in his duties and for dishonorably failing to pay his government credit card bill. As part of the appellant's punishment, the appellant's commander restricted him to Burlington County, New Jersey for 30 days.

On 17 May 2007, the appellant violated his commander's orders by visiting CJS and JJS at their home and departing for a Caribbean vacation with CJS. At the time the appellant departed for his Caribbean vacation, he knew he had no authority to depart. The appellant remained absent from his unit until 13 June 2007. On that date, the Pennsylvania State Police apprehended him following a traffic stop and turned him over to the AFOSI.

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[2] This issue is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Inappropriately Severe Sentence

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

In the case *sub judice*, the appellant's distribution of a controlled substance, intentional disregard of military authority, and forgery seriously compromise his standing as a military member. Moreover, his record is replete with a pattern of misconduct—non-judicial punishment for being derelict in his duties and for dishonorably failing to pay his government credit card bill; vacation of non-judicial punishment for failing to pay a just debt, unauthorized absence, and failing to obey a lawful order; a letter of admonishment for failing to go, unauthorized absence, and making a false official statement; and four letters of counseling for failing to obey a lawful order, failing to pay a just debt, multiple unauthorized absences, and making a false official statement.

This misconduct, like the misconduct of which the appellant was convicted, exemplifies his poor rehabilitative potential. Put simply, after carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offenses of which he was found guilty, we do not find the appellant's sentence inappropriately severe.

Erroneous Promulgating Order

Finally we note that in the Court-Martial Order (CMO), dated 11 December 2007, a portion of JJS's name is omitted in Specification 2 of Charge II and the word "form" was erroneously substituted for the word "front" in the specification of Charge IV. Preparation of a corrected CMO is hereby directed. *See United States v. Smith*, 30 M.J. 1022, 1028 (A.F.C.M.R. 1990).

Conclusion

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 approved findings and sentence are

AFFIRMED.

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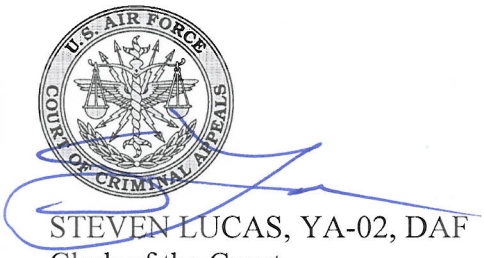

STEVEN LUCAS, YA-02, DAF
Clerk of the Court