

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman AHMAD I. AL HALABI
United States Air Force

ACM 36272

11 April 2007

Sentence adjudged 23 September 2004 by GCM convened at Travis Air Force Base, California. Military Judge: Barbara G. Brand (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 295 days, and reduction to E-1.

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

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Daniel J. Breen.

Before

BROWN, FRANCIS, and SOYBEL
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of two specifications of violating a general order, one specification of making a false official statement, and one specification of wrongfully retaining possession of unauthorized documents in violation of Articles 92, 107 and 134, UCMJ, 10 U.S.C. §§ 892, 907, 934. The military judge, sitting alone as a general court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 295 days, and reduction to the grade of E-1. The appellant spent 295 days in pretrial confinement and received day-for-day credit for that time. There was a pretrial agreement in this case that did not affect the adjudged sentence, but would have, amongst other things, provided him an additional 191 days of extra day-for-day credit based on other considerations. The convening authority approved the findings

and sentence as adjudged. On appeal, the appellant asserts that his sentence is inappropriately severe.

In asking that we find his sentence inappropriately severe he relies, in a very broad sense, on the arduousness and difficulty of his hard-fought trial; the alleged uncooperativeness and unreasonableness of government investigators and prosecutors in their dealings with the defense, both before and during trial; and the notion that he was generally treated as a person presumed to be guilty of all the offenses, even those that were never prosecuted and were eventually dismissed. Finding no error, we affirm.

Background

The appellant, a member of the 60th supply squadron and a native Arabic speaker, was deployed to Guantanamo Bay, Cuba (GTMO) as a linguist within Camp Delta, a secure detention and interrogation facility for detainees in the war on terrorism. His duties included the translation of letters written by detainees before they were mailed. He also translated other documents.

While assigned to GTMO, the appellant took two photographs of a portion of the camp where photography was prohibited, then lied to investigators when asked whether he had taken any unauthorized photographs. He also mishandled classified documents by transporting them to his quarters without the appropriate classification covers and failing to properly secure them while there. Finally, he maintained possession of unauthorized documents to include a listing of all detainees, a copy of an initial memorandum for record for a command inquiry related to the detention facility, a copy of an order for movement of detainees to and from GTMO, and a military map of GTMO. The appellant mailed these and other documents, some of which were classified at the time he possessed them, to himself at his home station, Travis Air Force Base, California. The maximum sentence for these offenses was a dishonorable discharge, confinement for 9 years and 6 months, forfeiture of all pay and allowances, a fine, and reduction to the grade of E-1.

The appellant, a below-the-zone Senior Airman, had a good service record devoid of any derogatory data. He presented a lengthy pre-sentencing case which highlighted his life growing up in Syria, and included numerous character statements, certificates from various achievements in his career, coins he had received for jobs well done, and many other exhibits showing a life of some struggle, achievement and close family ties. He was apparently a well liked, hard working individual.

Discussion

This Court may affirm only such findings and sentence as we find correct in law and in fact, and determine, on the basis of the entire record, should be approved. Article

66(c), UCMJ, 10 U.S.C. § 866(c). When considering sentence appropriateness, we should give "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

In conducting our review we must keep in mind that Article 66(c), UCMJ, has a sentence appropriateness provision that is "a sweeping Congressional mandate to ensure 'a fair and just punishment for every accused.'" *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (citing *United States v. Bauerbach*, 55 M.J. 501, 506 (A.C.C.A.2001)). Article 66(c), UCMJ, "requires that [we] independently determine, in every case within [our] limited Article 66, UCMJ, jurisdiction, the sentence appropriateness of each case [we] affirm." *Id.* at 384-85.

Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise 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).

Taking into account all the facts and circumstances, we do not find the appellant's sentence inappropriately severe. *See Snelling*, 14 M.J. at 268-69. To the contrary, after reviewing the entire record, we find the sentence is appropriate for this offender and his offenses. *See Baier*, 60 M.J. at 383-84; *Healy*, 26 M.J. at 395.

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

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator