

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class GINGER A. ALLEN
United States Air Force

ACM S31105

17 July 2007

Sentence adjudged 27 April 2006 by SPCM convened at Tinker Air Base, Oklahoma. Military Judge: Glenn L. Spitzer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 months and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Gerald R. Bruce

Before

BROWN, FRANCIS and SOYBEL
Appellate Military Judges

PER CURIAM:

At a special court-martial comprised of a military judge sitting alone, the appellant pled guilty to operating a motor vehicle while drunk and to wrongful use and distribution of methamphetamine in violation of Articles 111 and 112a, UCMJ, 10 U.S.C. §§ 911, 912a. Her sentence consists of a bad-conduct discharge, confinement for 2 months, and reduction to the grade of E-1. The convening authority approved the findings and sentence as adjudged.

On appeal, the appellant claims ineffective assistance of counsel for failure to provide the convening authority a minimally sufficient request for deferment of reduction in grade and forfeitures, and for failing to request waiver of automatic forfeitures in favor of the appellant's dependants. Finding no error we affirm.

In *United States v. Strickland*, 466 U.S. 668 (1984), the Supreme Court laid out the test for ineffective assistance of counsel in two parts. The counsel's performance must be deficient and the appellant must be prejudiced by counsel's deficiency. *Id.* If the counsel's performance falls within a "wide range of reasonable professional assistance," there is no ineffective assistance. *United States v. Morgan*, 37 M.J. 407, 409 (C.M.A 1993).

The trial defense counsel's undisputed post-trial affidavit shows that the tactical course decided upon by the appellant and her counsel was to emphasize obtaining a reduction in confinement and as a secondary matter, trying to convince the convening authority to disapprove the punitive discharge. In fact, these two factors were the theme of her sentencing case and it appears they continued with the same theme in post-trial matters. According to the trial defense counsel's post-trial affidavit, as a matter of strategy, the defense decided not to press very hard on the financial matters in the hopes of greater success on the confinement and discharge aspects of her sentence. He submitted post-trial matters in accordance with a strategy tailored to the appellant's personal circumstance and desires. We will not second guess this decision. See *United States v. Morgan*, 37 M.J. 407 (C.M.A. 1993); *United States v. Sanders*, 37 M.J. 116 (C.M.A. 1993).

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.

Chief Judge BROWN participated in this decision prior to his retirement.

OFFICIAL

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

