

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Senior Airman MICHAEL W. ANGLIN II**  
**United States Air Force**

**ACM 36910**

**22 August 2008**

Sentence adjudged 13 October 2006 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Steven J. Ehlenbeck.

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain G. Matt Osborn.

Before

WISE, BRAND, and HELGET  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of wrongful use of ecstasy and one specification of wrongful use of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Contrary to his pleas, he was convicted of one specification of wrongful use of marijuana and one specification of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The approved sentence consists of a bad-conduct discharge, confinement for 6 months, forfeitures of all pay and allowances for 6 months, and reduction to E-1.

The issues on appeal are whether the evidence was legally and factually sufficient to sustain the appellant's conviction for wrongful use of marijuana and cocaine; and whether the record of trial is incomplete.<sup>1</sup> Additionally, the appellant avers his sentence is inappropriately severe.

### *Background*

On 28 December 2005, the appellant was selected for a random urinalysis. The test results indicated the presence of ecstasy, methamphetamine, and marijuana. The appellant was questioned by AFOSI investigators and he admitted to knowingly ingesting ecstasy and speculated the ecstasy was laced with methamphetamine. He denied the use of marijuana. The appellant's unit sent him to an in-patient alcohol and drug abuse program. After his return, the appellant was once again selected for urinalysis testing on 30 May 2006. This time the test was positive for cocaine.

### *Legal and Factual Sufficiency*

The test for factual sufficiency is whether this Court is convinced beyond a reasonable doubt of the appellant's guilt, after weighing all the evidence and making allowances for not having personally observed the witnesses. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any reasonable fact-finder could have found all of the essential elements beyond a reasonable doubt. *Turner*, 25 M.J. at 324. In resolving questions of legal sufficiency, we must "draw every reasonable inference from the evidence of record in favor of the prosecution." *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001). Both standards are met here.

After reviewing the record of trial, it is clear the appellant wrongfully used ecstasy, methamphetamine, marijuana and cocaine. The drug testing results were thoroughly examined at trial and provided a sufficient basis for a reasonable fact-finder to find the appellant guilty. Further, we ourselves are convinced of the appellant's guilt.

### *Verbatim Transcript*

This Court reviews de novo whether a record of trial is complete, or if there are omissions, whether the omissions are substantial. *United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000); *United States v. Stoffer*, 53 M.J. 26, 27 (C.A.A.F. 2000). A verbatim record is required in the case *sub judice*. Rule for Courts-Martial (R.C.M.) 1103(b)(2)(B)(ii). "A substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the Government must rebut." *Henry*, 53 M.J. at 111.

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<sup>1</sup> The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431, 437 (C.M.A. 1982).

The forensic toxicologist had completed his first hour or so of testimony without any equipment malfunctions. After a recess was granted and the court reconvened for the continuation of the expert's testimony, the court reporter realized within four (4) minutes that the recording equipment wasn't working. The military judge announced to the court members "[S]ince a verbatim record is required, we're going back through the same material again. So, we request your indulgence and trial counsel, if you could proceed and recover that material." There was no objection to this procedure, and it is obvious, the military judge did exactly what needed to be done. The record was substantially verbatim. There were no substantial omissions.

### *Sentence Appropriateness*

We "may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The appellant wrongfully used several different drugs over a period of time. His use of the cocaine occurred after release from in-patient drug treatment. After a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the appellant's sentence was not inappropriately severe.

### *Post-trial Delay*

An issue not raised on appeal is the length of the post-trial delay. In this case, the overall delay in excess of 18 months between the docketing of this case with this Court and completion of review by this Court is facially unreasonable.<sup>2</sup> Because the delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice. *See also United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006). When we assume error, but are able to directly conclude that any error was harmless beyond a reasonable doubt, we need not engage in a separate analysis of each factor. *See United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case.

Having considered the totality of the circumstances and entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt and that no relief is warranted.

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<sup>2</sup> *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006).

*Conclusion*

The findings and the 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 findings and sentence, are

AFFIRMED.

OFFICIAL



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