

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class KENNETH J. BETTS
United States Air Force**

ACM 35218

16 April 2004

Sentence adjudged 27 February 2002 by GCM convened at McGuire Air Force Base, New Jersey. Military Judge: Harvey Kornstein (sitting alone).

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

Appellate Counsel for Appellant: Philip D. Cave.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Martin J. Hindel.

Before

**BRESLIN, ORR, and GENT
Appellate Military Judges**

PER CURIAM:

We have examined the record of trial, the assignment of errors, and the government's reply thereto. The appellant first argues that the military judge erred to the substantial prejudice of the appellant when he denied the motion to suppress the oral and written statements the appellant made to law enforcement agents on 2 August 2001, and evidence derived from those admissions. We find the military judge's findings of fact were not clearly erroneous. *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995); *United States v. Aaron*, 54 M.J. 538, 543 (A.F. Ct. Crim. App. 2000). The military judge also correctly applied *United States v. Schake*, 30 M.J. 314, 319 (C.M.A. 1990), and *United States v. Faisca*, 46 M.J. 276, 277 (C.A.A.F. 1997). We therefore hold that the military judge did not abuse his discretion when he denied the motion. *Ayala*, 43 M.J. at 298.

Pursuant to *United States v. Grostefon*, 12 M.J. 431, 436 (C.M.A. 1982), the appellant also asserts that the prosecution failed to prove each element of the offense beyond a reasonable doubt and that his sentence was inappropriately severe. We find that the evidence is legally and factually sufficient to affirm the appellant's conviction. *United States v. Richards*, 56 M.J. 282, 285 (C.A.A.F. 2002) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). We also find the appellant's sentence is not inappropriately severe.

Accordingly, we conclude the findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant was committed. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). On the basis of the entire record, the findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner