

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JEREMY S. BOZEROCKI
United States Air Force

ACM S30521

29 September 2005

Sentence adjudged 21 November 2003 by SPCM convened at Luke Air Force Base, Arizona. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, Major Harold M. Vaught, and Captain David P. Bennett.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Alisa W. James, Lieutenant Colonel Gary F. Spencer, and Lieutenant Colonel Robert V. Combs.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant complains his sentence was inappropriate because it was more severe than that of another airman at his base. The appellant pled guilty to two wrongful uses of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The prosecution introduced evidence in sentencing showing he violated phase program restrictions three times, one violation being just days before his court-martial. The other airman the appellant is comparing his sentence to pled guilty to two phase program restriction violations and a single wrongful use of cocaine, in violation of Articles 92 and 112a, UCMJ, 10 U.S.C. § 892, 912a.

This is not one of those “rare instances” in which sentence appropriateness must be judged by comparing the appellant’s sentence with another airman’s. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (quoting *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985))). Although there was some overlap between some of the appellant’s misconduct and that of the other airman, we do not find the cases to be so closely related as to require sentence comparison. Moreover, we conclude that there is a rational basis for the difference in sentences. *Id.* See also *United States v. Barrazamartinez*, 58 M.J. 173, 176 (C.A.A.F. 2003).

The 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.

OFFICIAL

ANGELA M. BRICE
Clerk of Court