

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant ANTHONY A. BRACKETT
United States Air Force

ACM S31560

16 June 2009

Sentence adjudged 27 August 2008 by SPCM convened at Yokota Air Base, Japan. Military Judge: Mark L. Allred (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 90 days, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Imelda L. Paredes, and Captain Tiaundra Sorrell.

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

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with the appellant's pleas, a military judge sitting as a special court-martial convicted him of one specification of fleeing apprehension and one specification of drunk driving, in violation of Articles 95 and 111, UCMJ, 10 U.S.C. §§ 895, 911. The adjudged and approved sentence consists of a bad-conduct discharge, 90 days confinement, and reduction to the grade of E-1.¹ On appeal the appellant asks this Court to set aside his sentence and order a sentence rehearing or, in the alternative, grant

¹ The appellant and the convening authority signed a pretrial agreement wherein the appellant agreed to plead guilty to the charges and specifications in return for the convening authority's promise to not approve confinement in excess of three months.

meaningful sentence relief. The basis for his request is that he opines his sentence, which includes a bad-conduct discharge, is inappropriately severe.² Finding no prejudicial error, we affirm.

Background

At approximately 0900 on 28 June 2008, the appellant was escorting a civilian guest onto Hardy Barracks, Japan. The appellant was drinking an alcoholic beverage as he attempted to sign in the guest and, because of an overindulgence of alcohol, had difficulty signing in the guest. After signing the guest in, the appellant entered a friend's car, started it, drove toward the gate, and attempted to depart the base. The security guards, suspecting the appellant was drunk, stopped the appellant and seized his military identification card. The appellant parked the vehicle and fled on foot. The security guards were unable to locate the appellant but placed a "Be On the Look Out" for the appellant. Approximately two days later the appellant was apprehended as he attempted to enter Yokota Air Base, Japan.

Inappropriately Severe Sentence

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises 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).

In this case, the appellant, by his actions, seriously compromised his standing as a non-commissioned officer and a military member. We note that this is not the appellant's first "brush with the law." Not only did he have a Japanese conviction for possessing and using ecstasy and cocaine, he had received non-judicial punishment for breaking into a Japanese restaurant and urinating on the floor, and a Letter of Reprimand for, inter alia, fraudulent enlistment. Moreover, approximately one month before he committed the crimes that led to this court-martial, an administrative discharge board had recommended he be separated with a discharge Under Other Than Honorable Conditions. The appellant's prior crimes and the fact that he would flee apprehension and drive drunk at a time he was pending an administrative separation all evince poor rehabilitative potential. After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offenses of which the

² This issue is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

appellant was found guilty, we do not find the appellant's sentence inappropriately severe.

Conclusion

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.

OFFICIAL



Christina E. Parsons
CHRISTINA E. PARSONS, TSgt, USAF
Deputy, Clerk of the Court