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

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**UNITED STATES**

**v.**

**Airman DUSTIN L. BRILL**
**United States Air Force**

**ACM 35687**

**27 July 2005**

Sentence adjudged 10 July 2003 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: James L. Flanary.

Approved sentence: Dishonorable discharge, confinement for 26 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Major Terry L. McElyea, Major Rachel E. VanLandingham, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Tracey L. Printer.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

SMITH, Judge:

In accordance with his pleas, the appellant was convicted of conspiracy to commit larceny, wrongfully using marijuana and cocaine on divers occasions, larceny, and housebreaking in violation of Articles 81, 112a, 121, and 130, UCMJ, 10 U.S.C. §§ 881, 912a, 921, 930. At a general court-martial, a panel of officer members sentenced him to a dishonorable discharge, confinement for 26 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the sentence as adjudged.

The appellant asserts that the trial counsel's sentencing argument was improper and that his sentence was inappropriately severe. Finding no error, we affirm the findings and sentence.

*Background*

The appellant and a fellow security forces airman developed a plan to steal personal property, mostly electronic equipment, from other squadron members. The appellant and his co-conspirator obtained a master key and entered the dormitory rooms of two airmen. The appellant kept the stolen items for about a week and then traded them with a civilian for cocaine. He admitted to using cocaine 6 to 7 times and marijuana 8 to 10 times during a period of about five months.

*Sentencing Argument*

The appellant contends that the trial counsel's relatively short sentencing argument was improper for a number of reasons. He objects to the trial counsel's use of the pronouns "we," "us," and "our," contending the trial counsel figuratively placed himself in the "jury box" with the members and inferred the crimes were against the members themselves. The appellant broadly contends that the trial counsel created an "improper feeling of undue command influence" and purported to speak for a higher authority when he said, "The US recognizes that after Airman Brill was caught, he did cooperate with investigators. And that is why the United States is not demanding a longer confinement." The appellant also challenges the trial counsel's reference to the Air Force core values and his failure to properly distinguish between a punitive and an administrative discharge.

The trial defense counsel did not object to the trial counsel's argument, therefore we review for plain error. *United States v. Barrazamartinez*, 58 M.J. 173, 175 (C.A.A.F. 2003); *United States v. Powell*, 49 M.J. 460 (C.A.A.F. 1998). After examining the argument in the context of the entire court-martial,[1] even if we assumed there was error in the trial counsel's argument, we find no material prejudice to the substantial rights of the appellant. Article 59(a), UCMJ, 10 U.S.C. § 859(a). We reach that conclusion considering the instructions provided by the military judge, the trial defense counsel's failure to object, the sentence imposed vis-à-vis the sentence recommended by the trial counsel, and our assessment that the argument was not the kind of personalization condemned by our superior court in *United States v. Shamberger*, 1 M.J. 377 (C.M.A. 1976).

[1] *United States v. Baer*, 53 M.J. 235, 238 (C.A.A.F. 2000).

*Sentence Appropriateness*

"Generally, sentence appropriateness should be judged by 'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). We have given individualized consideration to this particular appellant and the circumstances of his case. The appellant was young (19 when some of the offenses were committed), and he did cooperate with the Air Force Office of Special Investigations once he was caught. But he targeted deployed members from his unit, entered their rooms without permission, took valuable items, and exchanged them for drugs that he used, on some occasions, with other airmen. His conduct was dishonorable. The appellant faced a maximum of 27 years and 6 months of confinement, and he received only 26 months. His sentence is appropriate. *See* Article 66, UCMJ, 10 U.S.C. § 866; *United States v. Wacha*, 55 M.J. 266, 268 (C.A.A.F. 2001).

*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

ANGELA M. BRICE
Clerk of Court