UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Captain LINDA T. BRUHN
United States Air Force

ACM 37291

03 February 2010

Sentence adjudged 16 May 2008 by GCM convened at Bolling Air Force Base, Washington, District of Columbia. Military Judge: Stephen Woody.

Approved sentence: Dismissal, confinement for 6 months, and forfeiture of all pay and allowances.

Appellate Counsel for the Appellant: Captain Marla J. Gillman (argued), Major Shannon A. Bennett, Major Michael A. Burnat, and Major Lance J. Wood.

Appellate Counsel for the United States: Captain Joseph J. Kubler (argued), Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, Major Coretta E. Gray, and Gerald R. Bruce, Esquire.

Before

BRAND, JACKSON, and HELGET
Appellate Military Judges

PER CURIAM:

In accordance with her pleas, a military judge convicted the appellant of three specifications of fraternization and one specification of conduct unbecoming an officer and gentleman for providing alcohol to an underage airman, in violation of Articles 134 and 133, UCMJ, 10 U.S.C. §§ 934, 933. Contrary to her pleas, a panel of officer members sitting as a general court-martial convicted her of three specifications of fraternization and four specifications of conduct unbecoming an officer and gentleman for engaging in sexual intimacies with therapy patients, in violation of Articles 134 and

133, UCMJ. The adjudged and approved sentence consists of a dismissal, six months of confinement, and forfeiture of all pay and allowances.[1]

The appellant alleges five errors on appeal: (1) the findings of guilty to Specifications 1, 3, and 5 of the Charge are legally and factually insufficient;[2] (2) the findings of guilty to Specifications 1, 2, 3, and 4 of the Additional Charge are legally and factually insufficient; (3) the actions of the staff judge advocate (SJA) and the Security Forces Office of Investigation (SFOI) investigators breached the attorney-client relationship and impermissibly tainted the investigation and court-martial; (4) the military judge committed prejudicial error by denying the court-martial panel's request for phone records from a government witness; and (5) the appellant suffered cruel and unusual punishment during confinement. Finding no prejudicial error, we affirm.

Background

During the charged timeframe, the appellant was a 38 to 39-year-old clinical psychologist assigned to Bolling Air Force Base (AFB), District of Columbia. As part of her official duties, the appellant provided assistance to the Air Force Honor Guard (Honor Guard) to address recurring alcohol incidents within the unit. Between April 2006 and February 2007, the appellant engaged in sexual intimacies with six enlisted airmen assigned to the Honor Guard. Additionally, the appellant either treated or oversaw the treatment of three of those six airmen with whom she engaged in sexual intimacies.

In March 2006, the appellant met Airman First Class (A1C) AG, a member of the Honor Guard, when she began treating him at the Life Skills Support Center. Within months after the treatment ended, the appellant engaged in sexual intercourse with A1C AG on two occasions. Shortly after the second time, A1C AG returned to the appellant's house with his friend, Airman Basic (AB) KS, who was also assigned to the Honor Guard. After briefly talking with them in her bedroom, the appellant had sex with each of the two airmen while the other waited in the adjoining bathroom. A couple of weeks later, the appellant invited AB KS to her home and they again engaged in sexual intercourse.

Technical Sergeant (TSgt) PS first met the appellant in 2006 when she gave an Alcohol and Drug Abuse Prevention and Treatment (ADAPT) briefing to members of the Honor Guard. While out at a local Irish bar in November 2006, the appellant saw TSgt PS and the two became reacquainted. After having a few drinks, the appellant and TSgt PS began kissing in the bar. TSgt PS and the appellant eventually relocated to his truck,

[1] This Court heard arguments in this case as part of the Project Outreach Program at Creighton University School of Law.
[2] This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

where they kissed and fondled each other. The appellant later accepted TSgt PS as a patient in the ADAPT program.

The appellant met Senior Master Sergeant (SMSgt) AK in April 2006, when he attended a team treatment meeting concerning one of his subordinates. In the summer of 2006, the appellant and SMSgt AK began communicating with each other a few times a week via e-mail. Some of the e-mails were flirtatious and sexually oriented. On two separate occasions in the summer of 2006, they had sexual intercourse. Sometime thereafter, the appellant sent SMSgt AK an e-mail to ask whether he wanted to go away with her for the weekend.

In September 2006, the appellant began corresponding with A1C KL, an Honor Guard member, on MySpace[3] and they became friends. They began dating and engaged in sexual intercourse and other sexual acts 30 to 40 times during the fall of 2006. On numerous occasions, the appellant provided alcohol to A1C KL, who was then 19 years old. After their sexual relationship ended, the appellant accepted A1C KL as a patient in the ADAPT program.

On 29 December 2006, the appellant and her friends met a young man, later identified as Senior Airman (SrA) DL, at a local bar. Too intoxicated to drive, the group called TSgt WM to pick them up from the bar. TSgt WM complied, and drove the group to the appellant's house. The appellant and SrA DL had sexual intercourse in her home. The appellant indicated she was unaware SrA DL was an enlisted member of the Air Force when they had sex. In late January 2007, SrA DL contacted the appellant and invited her to his off-base home. At that time, the appellant was aware he was enlisted; however, she drove to his house and while there, they kissed and SrA DL fondled her.

Discussion

Legal and Factual Sufficiency

The appellant contends that the evidence presented at trial was legally and factually insufficient to sustain the findings of guilty for the fraternization specifications involving A1C AG, AB KS, and TSgt PS and the conduct unbecoming an officer and gentleman specifications involving her clinical treatment of A1C AG, A1C KL, and TSgt PS.

We review claims of legal and factual insufficiency de novo, examining all the evidence properly admitted at trial. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). "The test for legal sufficiency

[3] MySpace is an on-line webpage where individuals post personal information and photographs, engage in instant messaging, send e-mails, and interact with other individuals who have access to the webpages.

of the evidence is 'whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt.'" *United States v. Humpherys*, 57 M.J. 83, 94 (C.A.A.F. 2002) (quoting *United States v. Turner*, 25 M.J. 324, 324 (C.M.A. 1987)). 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).

The test for factual sufficiency is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [we] are [ourselves] convinced of the [appellant's] guilt beyond a reasonable doubt." *Turner*, 25 M.J. at 325. Review of the evidence is limited to the entire record, which includes only the evidence admitted at trial and exposed to the crucible of cross-examination. Article 66(c), UCMJ; *United States v. Bethea*, 46 C.M.R. 223, 224-25 (C.M.A. 1973).

We have carefully reviewed the record of trial in this case. The appellant asserts that the government improperly used the American Psychological Association (APA) guidelines to form the basis of the conduct unbecoming offenses she deems legally insufficient. We disagree. Rather than relying on any purported breach of APA guidelines, the offenses hinge on whether it is appropriate conduct for an officer in the United States Air Force to treat recent sexual partners as patients or to initiate sexual relationships with former patients. Additionally, with respect to all the disputed specifications, although the trial defense counsel vigorously cross-examined the prosecution witnesses and attempted to undermine their credibility, we find the evidence is legally sufficient. Moreover, we conclude the evidence against the appellant is compelling. Therefore, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we ourselves are convinced that the appellant is guilty of Specifications 1, 3, and 5 of the Charge and Specifications 1, 2, 3, and 4 of the Additional Charge beyond a reasonable doubt.

Actions of the SJA and Investigators

The appellant contends that the government breached the attorney-client relationship by reading privileged e-mails between the appellant and her detailed military defense counsel and this breach prejudiced her, as it tainted any continuing investigation and the court-martial.

Pursuant to an investigation, SFOI investigators obtained lawful authorization to seize and search the appellant's government computer and e-mail account. During the search, the investigators came across and read three e-mails from the appellant to her detailed military defense counsel. After reviewing the e-mails, the investigators spoke with the SJA, who devised a plan to prevent any further use or discussion of the

privileged information. She advised them to place the privileged e-mails in a sealed envelope, directed them not to discuss the content of the e-mails, and later recused herself from further involvement in the case. As the e-mails were lost prior to the Article 32, UCMJ, 10 U.S.C. § 832, hearing, there is no record of their contents.

During the Article 32, UCMJ, hearing, the appellant raised her concerns regarding the compromised communications. Acknowledging these concerns, the investigating officer stated she did not read and would not consider the contents of the e-mails for the purposes of her recommendation to the convening authority. The two SFOI investigators were questioned during the Article 32, UCMJ, hearing, and they stated the e-mails were not used in the furtherance of the appellant's investigation. They indicated SFOI had interviewed all the co-actors before they read the attorney-client e-mails, with the exception of A1C AG and A1C KS. Before reviewing the e-mails, the investigators were attempting to interview A1C AG. During an interview with A1C KS on an unrelated case, he spontaneously disclosed his relationship with the appellant. Additionally, the assigned trial counsel was unaware of the contents of the e-mails and the SJA had recused herself from the case.

The Sixth Amendment[4] right to counsel includes the right of an accused to confer privately with her attorney. *United States v. Brooks*, 66 M.J. 221, 223 (C.A.A.F. 2008) (citing *United States v. Godshalk*, 44 M.J. 487, 490 (C.A.A.F. 1996)). Mil. R. Evid. 502 extends protection to confidential communications between an attorney and client "made for the purpose of facilitating the rendition of professional legal services to the client." Mil. R. Evid. 502(a).

There is a strong presumption that an infringement on the attorney-client relationship is not a structural error requiring reversal. *Brooks*, 66 M.J. at 224. Structural errors involve errors so significant that a criminal trial cannot reliably make a determination as to guilt or innocence. *Id.* "[F]or all other errors, an appellant must show an effect on the proceedings or prejudice to substantial rights." *Id.* Factors this Court should consider in reaching its findings include whether there was tainted evidence in the case, communication of the defense strategy to the prosecution, or purposeful intrusion of the attorney-client relationship by the government. *Weatherford v. Bursey*, 429 U.S. 545, 558 (1977). There must be some showing that there was a "realistic possibility of injury" to an accused or a "benefit to the [government]" because of the intrusion. *United States v. Dyer*, 821 F.2d 35, 38 (1st Cir. 1987) (internal citations omitted).

"Failure by a party to raise defenses or objections or to make motions or requests which must be made before pleas are entered under [Rule for Courts-Martial (R.C.M.) 905](b) of this rule shall constitute waiver." R.C.M. 905(e). "We review application of

[4] U.S. CONST. amend. VI.

the plain error doctrine de novo, as a question of law." *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000). A distinction has been made between "forfeiture" versus "waiver" of a known right. "A forfeiture is basically an oversight; a waiver is a deliberate decision not to present a ground for relief that might be available in the law." *United States v. Campos*, 67 M.J. 330, 332 (C.A.A.F. 2009) (quoting *United States v. Cook*, 406 F.3d 485, 487 (7th Cir. 2005)). Generally speaking, forfeited issues are reviewed for plain error, whereas waived issues are not subject to review. *Id.* (quoting *United States v. Pappas*, 409 F.3d 828, 830 (7th Cir. 2005)). However, "[Mil. R. Evid.] 103(d) allows appellate courts to recognize plain errors that materially prejudice an [appellant's] substantial rights even though defense counsel has failed to make a timely objection." *Id.* at 332 n.2. "The plain error standard is met when '(1) an error was committed; (2) the error was plain, or clear, or obvious; and (3) the error resulted in material prejudice to substantial rights.'" *United States v. Maynard*, 66 M.J. 242, 244 (C.A.A.F. 2008) (quoting *United States v. Hardison*, 64 M.J. 279, 281 (C.A.A.F. 2007)).

Although the appellant addressed her concerns regarding the privileged e-mails in a petition for extraordinary relief[5] and at the Article 32, UCMJ, hearing, she did not raise this issue at trial. At best, the appellant forfeited a review of this matter. Regardless of whether it was waived or forfeited, we considered this issue under the plain error doctrine. After carefully reviewing the record of trial, we have found, and the appellant has offered, no evidence to suggest: that any evidence presented at trial was tainted; that the government was privy to defense strategy; or that government agents purposefully intruded on the attorney-client relationship. The defense argument that the alleged error had an unfair prejudicial impact on the jury's deliberations or that the government's case was bolstered or somehow advanced through the discovery of the three e-mails, the contents of which are unknown to us, is mere speculation. Thus, we find there is no error on this issue.

Request for Witness' Phone Records

The appellant asserts that she was prejudiced by the military judge's denial of a panel member's request to reopen the hearing and produce "any evidence (such as cell phone records) of [TSgt WM's] phone call to [the appellant] on the morning after picking her and [SrA DL] up."

[5] In her Petition for Extraordinary Relief, dated 20 July 2007, the appellant requested that: (1) all files and documents relating to this case in the possession of the Commander of the 11th Wing, the wing staff judge advocate (SJA), the Security Forces Office of Investigation (SFOI) at Bolling Air Force Base (AFB), the Air Force Office of Special Investigations (AFOSI) detachment at Bolling AFB, and the Defense Computer Forensic Laboratory (DCFL) be sealed; (2) the SJA and the legal office staff, the Bolling AFB SFOI and AFOSI members, and DCFL personnel be recused from further participation in the case; (3) an alternative SJA be appointed; and (4) this Court appoint a special-master to, inter alia, identify, gather, and remove all attorney-client privileged materials and determine whether any attorney-client matter was compromised and used during the investigation and prosecution of the appellant's case. This Court denied the appellant's request for relief, finding the relief sought should be decided during the ongoing court proceedings. As noted above, the appellant failed to raise this issue at trial.

"The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe." Article 46, UCMJ, 10 U.S.C. § 846. R.C.M. 921(b) states "[m]embers may request that the court-martial be reopened and that portions of the record be read to them or additional evidence introduced." However, this right to obtain additional evidence is not absolute. While members may request additional witnesses or evidence, their request is subject to an interlocutory ruling by the military judge. R.C.M. 801(c); *see also* R.C.M. 921(b); *United States v. Campbell*, 37 M.J. 1049, 1051 (N.M.C.M.R. 1993). In determining whether to grant a member's request for additional information, the military judge should consider the "[d]ifficulty in obtaining witnesses and concomitant delay; the materiality of the testimony that a witness [or evidence] could produce; the likelihood that the testimony sought might be subject to a claim of privilege; and the objections of the parties to reopening the evidence." *United States v. Lampani*, 14 M.J. 22, 26 (C.M.A. 1982).

We review a military judge's denial of a member's request for additional information for an abuse of discretion. *United States v. Carter*, 40 M.J. 102, 104 (C.M.A. 1994). An abuse of discretion will be found only if the judge's decision was "arbitrary, fanciful, clearly unreasonable," or "clearly erroneous." *United States v. McElhaney*, 54 M.J. 120, 130 (C.A.A.F. 2000) (quoting *United States v. Miller*, 46 M.J. 63, 65 (C.A.A.F. 1997); *United States v. Travers*, 25 M.J. 61, 62 (C.A.A.F. 1987)).

Assuming, arguendo, that the military judge did abuse his discretion by denying the member's request for phone records, this Court must find "the military judge's error materially prejudiced the substantial rights of the appellant" for the appellant to be entitled to relief. *United States v. Rios*, 64 M.J. 566, 569 (Army Ct. Crim. App. 2007) (citing Article 59(a), UCMJ, 10 U.S.C. § 859(a)).

A military judge has discretion in deciding whether to grant a member's request for additional information. Here, the record reveals the military judge read the request from the panel member, discussed the issue with both trial defense and government counsel during an Article 39(a), UCMJ, 10 U.S.C. § 839(a), session, took a brief recess to consider the request, and allowed both counsel a second opportunity to put their positions on the record. Although it would have been helpful to this Court if the military judge had specifically addressed the *Lampani* factors while making his ruling, it is clear he considered these factors based on his remarks. The trial defense counsel did not object to the military judge's findings on the issue.

The only cell phone records available to the court at the time of trial were the appellant's cell phone records. It is unclear from the record whether TSgt WM even called the appellant's cell phone on the morning of 30 December 2006. TSgt WM testified, "I'm not sure who called who, but things got -- I had kind of like a verbal altercation with [SMSgt JB] the next morning. I ended up talking to [the appellant]." To

avoid misleading the members, it would have been necessary to secure additional phone records which would have created an unreasonable delay.

Considering the remaining *Lampani* factors, the cell phone records were not subject to a claim of privilege and the trial counsel objected to reopening the case to produce the cell phone records then available. Regarding materiality, the appellant contends the requested records were material because they go directly to TSgt WM's credibility. However, as noted above, TSgt WM never testified that he placed a call from his cell phone to the appellant's cell phone on the morning of 30 December 2006. In fact, quite to the contrary, he conceded he could not remember how he had come to speak with the appellant that morning. Therefore, in addition to their questionable materiality, it is also debatable whether the available records were admissible under a Mil. R. Evid. 403 analysis, as they would not necessarily show whether TSgt WM spoke with the appellant that morning. Further, TSgt WM was not the only witness to testify regarding Specifications 5 and 6 of the Charge. Thus, the military judge did not err in denying the member's request for phone records.

Furthermore, even if this Court were to find the military judge did err, the error did not materially prejudice the substantial rights of the appellant. By her own admission during the guilty plea inquiry, the appellant had sexual intercourse with SrA DL after bringing him home from the bar in December 2006 and had sexual interactions with SrA DL in January 2007. She indicated she was not aware SrA DL was enlisted before their first sexual encounter. By exceptions and substitutions, the members found the appellant guilty of fraternizing with SrA DL solely for the January 2007 interaction.

Conditions of the Appellant's Confinement

The appellant asserts that she was subjected to sexual harassment by a guard, baseless disciplinary actions, and unacceptable living conditions in violation of the Eighth Amendment[6] and Article 55, UCMJ, 10 U.S.C. § 855, while confined to the Naval Brig, Norfolk. To support her appeal, the appellant submitted a post-trial declaration stating she faced "out of the ordinary" living conditions in the confinement facility, to include flaking paint, restrictions on drinking water at night in cells without air conditioning,[7] inadequate storage for personal belongings, insufficient time to do laundry, and too few sets of fitness gear. She asserts that a male guard, after making inappropriate comments and gestures for approximately two weeks, grabbed her by the shoulder and attempted to kiss her. The appellant also claims that she received negative marks and was subjected to cell "shake-downs" and monitoring after making her complaint.

[6] U.S. CONST. amend. VIII.
[7] While confined to her cell, the appellant did have access to running water from a sink in her cell at all times.

Following the alleged sexual harassment incident, the appellant filed a complaint through the prisoner grievance system. An investigation ensued and soon after the complaint was filed, the appellant met with an external sexual assault response coordinator (SARC). The investigation determined the guard "did not sexually assault or harass the [appellant];" however, he did grab the appellant's shoulder. Based on this physical contact and other violations of brig policies, the guard was removed from brig duty. With respect to the disciplinary actions, the Command Support Officer for the Naval Brig indicates in his post-trial declaration that the two negative marks were removed from the appellant's record, all cells in the appellant's cell block were searched on the day in question, and all cells in the facility were being monitored by staff of the same gender.

We review allegations of Eighth Amendment and Article 55, UCMJ, violations de novo. *United States v. Pena*, 64 M.J. 259, 265 (C.A.A.F. 2007) (citing *United States v. White*, 54 M.J. 469, 471 (C.A.A.F. 2001)). Unless there is some evidence of legislative intent to create greater protection, we apply the same Eighth Amendment jurisprudence to claims alleging Eighth Amendment and Article 55, UCMJ, violations. *Id.* To prove an Eighth Amendment violation, the appellant must show "(1) an objectively, sufficiently serious act or omission resulting in the denial of necessities; (2) a culpable state of mind on the part of prison officials amounting to deliberate indifference to [the appellant's] health and safety; and (3) that [the appellant] 'has exhausted the prisoner-grievance system . . . and that [she] has petitioned for relief under Article 138, UCMJ, 10 [U.S.C.] § 938." *United States v. Lovett*, 63 M.J. 211, 215 (C.A.A.F. 2006) (internal citations omitted).

First we will focus on the allegations pertaining to the disciplinary actions and prison living conditions. With respect to the disciplinary actions, we note the negative marks were removed from the appellant's record before she even raised them as a concern in her clemency submission and appeal. The other disciplinary actions raised by the appellant were, in fact, nothing more than standard protocol for the confinement facility in order to maintain control of its population. Regarding the living conditions in the facility, while such conditions may have made the appellant less comfortable than she might have liked, neither the Eighth Amendment nor Article 55, UCMJ, require "comfortable prisons." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981)). Rather, the challenged conditions must constitute "objectively, sufficiently serious act[s] or omission[s]" that resulted in an excessive risk to inmate health or safety knowingly disregarded by prison officials. *Lovett*, 63 M.J. at 215-16 (citing *Brennan*, 511 U.S. at 834, 837). Assuming, without deciding, that the appellant's description is accurate, the conditions simply do not rise to the level needed to constitute cruel and unusual punishment.

We now turn to the alleged sexual harassment claim. As the investigation determined there was physical contact but no sexual harassment, we first consider this

claim under Eighth Amendment jurisprudence relating to use of force. Excessive use of force by prison officials may constitute an Eighth Amendment violation. *Hudson v. McMillian*, 503 U.S. 1 (1992). However, to prevail on an excessive force claim, the appellant must show that prison officials acted "maliciously and sadistically to cause harm." *Id.* at 7. Under this standard, we must consider whether "'the officials act[ed] with a sufficiently culpable state of mind' and [whether] the alleged wrongdoing was objectively 'harmful enough' to establish a constitutional violation." *Id.* at 8 (first alteration in original) (quoting *Wilson v. Seiter*, 501 U.S. 294, 297, 303 (1991)). With respect to degree of harm, while evidence of a "significant injury" is not required, the absence of injury is a factor to be considered. *See id.* at 9-10. Moreover, "[not] every malevolent touch by a prison guard gives rise to a federal cause of action." *Id.* at 9. The Eighth Amendment does not protect against *de minimis* use of physical force. *Id.* at 9-10.

Based on our review of the record, the guard did grab the appellant by the shoulder. However, there is no evidence that he did so "maliciously and sadistically" to cause harm to the appellant. Furthermore, there is no claim, or evidence for that matter, that the appellant suffered any injury or pain from the contact. Therefore, we find the contact did not rise to the level of an Eighth Amendment violation.

Even assuming, arguendo, that the conclusions of the investigation were incorrect and there was sexual harassment, this claim fails. "[S]exual harassment may, in some circumstances, rise to the level of cruel and unusual punishment." *United States v. Sanchez*, 53 M.J. 393, 395 (C.A.A.F. 2000). To establish a constitutional claim of sexual harassment, the appellant must demonstrate that the harassment caused actual "pain" and show the officer acted with "a sufficiently culpable state of mind." *Id.* at 395-96 (quoting *Frietas v. Ault*, 109 F.3d 1335, 1338 (8th Cir. 1997)). In other words, there is both an objective and subjective component to the test. When objectively considering pain, "any such claim would have to be a well-established and clinically diagnosed anxiety or depression." *Id.* at 396 (citing *Hudson*, 503 U.S. at 16-17). Our superior court has found that crying while speaking with a counselor or fear of the guards because of their position of control does not rise to the required level of "pain." *Id.*

Here, the appellant has not presented evidence of either "physical harm" or "documented psychological trauma." *See id.* Moreover, she has not presented evidence of a deliberate indifference by the prison officials. Once the appellant reported the incident, the prison officials began a full investigation, provided her with a SARC, and removed the offending guard from his brig duties. Thus, the circumstances do not rise to the level of cruel and unusual punishment.

Having concluded the conditions did not constitute cruel and unusual punishment, we need not address whether or not she exhausted her administrative remedies before seeking appellate relief.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

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