

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JOHNATHAN B. BUSH
United States Air Force

ACM S31439

15 December 2008

Sentence adjudged 07 December 2007 by SPCM convened at Hurlburt Field, Florida. Military Judge: W. Thomas Cumbie.

Approved sentence: Bad-conduct discharge, confinement for 45 days, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Michael A. Burnat.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Coretta E. Gray.

Before

WISE, BRAND, and HELGET
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 the appellant of wrongful divers use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged and approved sentence consists of a bad-conduct discharge, 45 days confinement, and reduction to E-1. The one issue on appeal is whether the appellant's sentence is inappropriately severe.* Finding no error, we affirm.

* The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Background

The appellant, who apparently wanted to impress the young lady who put the cocaine out for all to use at a party, snorted cocaine after having had a number of drinks. He was then tasked with a urinalysis, which tested positive for cocaine. Thereafter, at another party, the appellant snorted cocaine on two more occasions. He submitted to another urinalysis after these uses, which also tested positive for cocaine.

Inappropriately Severe Sentence

The appellant avers his sentence to a bad-conduct discharge is inappropriately severe. Article 66(c), UCMJ, 10 U.S.C. § 866(c), provides that this Court “may affirm . . . the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved.” Our superior court has concluded that the Courts of Criminal Appeals have the power to, “in the interests of justice, substantially lessen the rigor of a legal sentence.” *United States v. Lanford*, 20 C.M.R. 87, 94 (C.M.A. 1955), *quoted in United States v. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002).

After carefully examining the submissions of counsel, the appellant’s military record, and taking into account all the facts and circumstances surrounding the offense of which the appellant was found guilty, we do not find the appellant’s sentence, as approved by the convening authority, 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; *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