

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Technical Sergeant PATRICK M. BYRNE
United States Air Force**

ACM 36467

13 April 2007

Sentence adjudged 21 July 2005 by GCM convened at Andrews Air Force Base, Maryland. Military Judge: Christopher A. Santoro (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, a fine of \$20,000.00 with confinement for an additional 5 months if the fine is not paid, and reduction to E-4.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Teresa L. Davis, and Captain John S. Fredland.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Kimani R. Eason.

Before

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of two specifications of stealing travel funds, the property of the United States, and one specification of forgery on divers occasions, in violation of Articles 121 and 123, UCMJ, 10 U.S.C. §§ 921, 923. A military judge, sitting alone as a general court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 9 months, a fine of \$20,000.00, and to be further confined until the fine is paid, up to an additional 6 months, and reduction to the grade of E-4. The convening authority approved only so much of the sentence as provides for a bad-conduct discharge, confinement for 9 months, a fine of \$20,000.00, with confinement for an additional 5 months if the fine is not paid, and reduction to the grade of E-4. On

appeal, the appellant asserts that his sentence is inappropriately severe. Finding no merit in the appellant's assertion of error, we affirm.

We reviewed the record of trial, the appellant's assignment of error, and the government's reply thereto. In determining the appropriateness of a sentence, this Court exercises its "highly discretionary" powers to assure that justice is done and the appellant receives the punishment he deserves. *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). Performing this function does not authorize this Court to exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this responsibility is to give "individualized consideration" to an appellant "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)).

The appellant, a member of the Air National Guard serving on active duty pursuant to Title 10, United States Code, pled guilty to stealing \$13,125.00 from the United States government by filing fraudulent travel vouchers. During the appellant's unsworn statement in the pre-sentencing phase of his court-martial, he told the military judge, "I can pay back the money, and I request you give me the opportunity to right my wrong . . ." The appellant also received the benefit of his bargain with the convening authority when, in accordance with the pretrial agreement, the convening authority reduced, by one month, the additional confinement adjudged contingent on his paying the fine. When the appellant failed to pay his fine, his term of confinement went from 9 months to 14 months, the cap to which the appellant agreed in his pretrial agreement. After a careful review of the appellant's case, we hold that the appellant's sentence is not inappropriately severe.

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 findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator