

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

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**UNITED STATES**

**v.**

**Airman DAVID R. CALDWELL  
United States Air Force**

**ACM S31657**

**19 February 2010**

Sentence adjudged 28 April 2009 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: William M. Burd (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, forfeiture of \$933.00 pay per month for 3 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Reggie D. Yager.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, Captain Joseph Kubler, and Gerald R. Bruce, Esquire.

Before

**BRAND, JACKSON, and THOMPSON  
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

Pursuant to his pleas, a military judge sitting as a special court-martial found the appellant guilty of one specification of wrongful use of Oxycodone (Percocet), in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged and approved sentence consists of a bad-conduct discharge, three months of confinement, forfeiture of \$933 pay per month for three months, and reduction to the grade of E-1.<sup>1</sup> On appeal, the appellant

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<sup>1</sup> The appellant and the convening authority entered into a pretrial agreement wherein the appellant agreed to plead guilty to the charge and specification in return for the convening authority's promise not to approve more than three

asks this Court to disapprove the bad-conduct discharge and reassess the sentence. As the basis for his request, he opines that, in light of his acceptance of responsibility and the motivation for his crime, his sentence to a bad-conduct discharge is inappropriately severe.<sup>2</sup> We disagree and finding no prejudicial error, we affirm the findings and the sentence.

### *Background*

In December 2008, the appellant advised his roommate that he was experiencing wisdom tooth pain and that the Motrin his dentist had prescribed was ineffective. The appellant's roommate informed the appellant that he had a friend who could provide him with Percocet and the appellant asked his roommate to arrange a meeting. The appellant met his roommate's friend, purchased three Percocet pills, and ingested the pills while off base. Upon returning to base, the appellant's military training leaders suspected the appellant of drinking alcohol, and he was apprehended by Security Forces. When the appellant passed a breathalyzer test, their suspicions turned to Percocet and the appellant was asked to consent to a blood and urine test. The appellant consented to the tests and his urine subsequently tested positive for Oxycodone.

### *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 offense, 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 the case sub judice, the appellant violated the standards expected of airmen. Most aggravating is the fact that he involved another airman-trainee in his criminal enterprise. Moreover, this is not the appellant's first brush with the law. In the relatively short period of time that the appellant has been in the military, he has managed to receive non-judicial punishment for underage drinking and three letters of reprimand for willful dereliction of duty, all of which 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 offense of which the appellant

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months of confinement if a bad-conduct discharge was adjudged and not more than five months of confinement if a bad-conduct discharge was not adjudged.

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

was found guilty, we do not find the appellant's sentence, one which includes a bad-conduct discharge, 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



A handwritten signature in blue ink, appearing to read "STEVEN LUCAS", is written over the seal and extends to the right.

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