

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

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**UNITED STATES**

**v.**

**Airman First Class JOHN A. CARRILLO  
United States Air Force**

**ACM 34876**

**12 August 2002**

Sentence adjudged 23 October 2001 by GCM convened at Yokota Air Base, Japan. Military Judge: David F. Brash (sitting alone).

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

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Brandon A. Burnett, and Major Jeffrey A. Vires.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major Adam Oler.

Before

**SCHLEGEL, BRESLIN, and PECINOVSKY  
Appellate Military Judges**

**PER CURIAM:**

The appellant was convicted, contrary to his pleas, of wrongful use and distribution of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. His approved sentence included a bad-conduct discharge, 45 days' confinement, and reduction to the grade of E-1. Pursuant to *United States v. Grostefon* 12 M.J. 431 (C.M.A. 1982), the appellant alleges that his confession regarding methamphetamine use was not properly corroborated, that he received ineffective assistance of counsel, and that his sentence is inappropriately severe. After reviewing the record of trial, we affirm the findings and sentence.

## I.

The first issue is whether the appellant's confessions were adequately corroborated at trial and, therefore, were legally and factually sufficient to support a conviction for methamphetamine use.

This Court can affirm, based on the entire record, only those findings of guilt that it determines to be correct in fact and law. Article 66(c), UCMJ, 10 U.S.C. § 866(c). 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, the members of [this Court] are themselves convinced of the accused's guilt beyond a reasonable doubt." *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The test for legal sufficiency, on the other hand, 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." *Id.* at 324.

Under Mil. R. Evid. 304(g), "[a]n admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been introduced that corroborates the essential facts admitted to justify sufficiently an inference of their truth." The purpose of this corroboration is to prove the trustworthiness of the confession. *United States v. Maio*, 34 M.J. 215, 218 (C.M.A. 1992). The corroboration need not prove every element of the offense; rather, the corroborating evidence must raise only an inference of truth as to the essential facts admitted. *United States v. Baldwin*, 54 M.J. 464, 465 (2001).

The appellant made oral and written statements to the Air Force Office of Special Investigations (AFOSI) that he used methamphetamine on divers occasions. We find that the trial counsel adequately corroborated these pre-trial confessions. Trial counsel introduced the testimony of Ms. Lisa Berg, who said she used methamphetamine with the appellant. Her testimony also established the appellant knew using methamphetamine was illegal. Senior Airman (SrA) Burman testified the appellant repeatedly admitted using methamphetamine. Additionally, SrA Burman testified about his familiarity with a specific drug dealer the appellant claimed to get his drugs from. An AFOSI agent also testified about this known drug dealer. Finally, the appellant's written confession stated that methamphetamine made him feel as though he had drunk "a whole pot of coffee with nothing to eat." He also described the methamphetamine as a white, crystal-like substance that he had to break up. A pharmacist testified that the effects the appellant experienced were commensurate with methamphetamine use, and that methamphetamine typically is in crystalline form, which requires crushing in order to use. The appellant's confessions were more than adequately corroborated by the witnesses, and the evidence is factually and legally sufficient to sustain a conviction.

## II.

The second issue the appellant raises is whether he received effective assistance of counsel at his court martial.

In order to prevail on this issue, the appellant must prove first, that his counsel's performance was so deficient that he was not functioning as counsel within the meaning of the Sixth Amendment, and second, that his counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668 (1984). In order for there to be prejudice, the Supreme Court has articulated that the counsel's performance be so deficient that the "performance renders the result of the trial unreliable or the proceeding fundamentally unfair." *Lockhart v. Fretwell*, 506 U.S. 364, 364 (1993) (citations omitted). The Supreme Court also stated, "Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him." *Id.* at 372. The defense counsel must have failed to fulfill a constitutional requirement established to ensure the appellant's trial was reliable and not fundamentally unfair, in order for there to be prejudice. *See United States v. Thompson*, 51 M.J. 431, 435 (1999).

We do not find any evidence that the defense counsel acted deficiently. The appellant complains that the defense counsel failed to interview coworkers who could testify as to his good military character, but the record shows defense counsel presented 11 statements from his coworkers. The appellant also avers that the defense counsel was unprepared for trial, but nothing in the record supports this allegation.

Secondly, even if this Court were to agree with some of the appellant's vague claims, we find no prejudicial error because he confessed. The evidence proffered at trial supported the ultimate findings of the court. The defense counsel's representation of the appellant did not cause an unfair or unreliable result because the evidence, including his own statements, was overwhelming.

## III.

The third issue raised is whether or not the appellant received an appropriate sentence.

We have the power and independent duty to consider the appropriateness of adjudged sentences. *United States v. Baker*, 28 M.J. 121, 123 (C.M.A. 1989). A sentence is appropriate where the court considers the entire record, the character of the offender, and the nature of the offense. *United States v. Peoples*, 29 M.J. 426 (C.M.A. 1990); *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982). "Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

Article 112a(e), UCMJ, 10 U.S.C. §912a(e), proscribes a maximum punishment of a dishonorable discharge, forfeiture of all pay and allowances, and confinement of 20 years for the wrongful use and distribution of methamphetamine. The military judge sentenced the appellant to a bad-conduct discharge, forfeiture of all pay and allowances, and to confinement for only 45 days. In light of the maximum allowable sentence, the appellant's sentence is not severe. The use and distribution of methamphetamine are serious offenses.

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. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF  
Chief Court Administrator