

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class CHRISTOPHER L. CHILDERS
United States Air Force**

ACM 35336

1 April 2003

Sentence adjudged 27 August 2002 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Ann D. Shane.

Approved sentence: Bad-conduct discharge, confinement for 90 days, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Lance B. Sigmon.

Before

BURD, ORR, W.E., and CONNELLY
Appellate Military Judges

CONNELLY, Judge:

On 27 August 2002, the appellant was tried by general court-martial composed of officer members at Shaw Air Force Base, South Carolina. In accordance with his pleas, he was convicted of wrongful possession and wrongful distribution of cocaine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. His approved sentence included a bad-conduct discharge, confinement for 90 days, forfeiture of all pay and allowances, and reduction to E-1. The appellant alleges that his sentence is inappropriately severe.

While on leave, the appellant and a civilian friend rented a hotel room in Boston. While attending a club, the appellant saw his friend use cocaine from a vial with a bullet on top. Returning to the hotel room, the appellant went to sleep while his friend

remained awake. Following check-out the next morning, the appellant returned to his base.

While unpacking his bag, the appellant discovered that his friend had mistakenly placed the vial containing cocaine in his suitcase. He telephoned his friend who verified the contents as cocaine and told the appellant to hold onto the vial because he wanted it back. The appellant hid the vial in his stereo and later confided to another airman what had occurred. That airman subsequently asked for the remaining cocaine.

The appellant did not immediately provide the cocaine to the airman, but told him to return later. A few hours later, the appellant gave the cocaine to the airman and retained the vial. After the airman was later caught using cocaine, he provided the appellant's name to the authorities as the source of the drug. The appellant confessed to the possession and distribution of cocaine and gave consent to search his dorm room where the vial and a residual amount of cocaine were found.

The appellant presented a strong sentencing case consisting of a good military record prior to his criminal conduct and strong duty performance while awaiting trial. He alleges that the bad-conduct discharge is inappropriately severe.

Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires this Court to approve only that sentence, or such part or amount of the sentence, as we find correct in law and fact and determine should be approved. The determination of 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). In order to determine the appropriateness of the sentence, this Court must consider the particular appellant, the nature and seriousness of the offense, the appellant's record of service and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982).

We do not find the appellant's sentence to be inappropriately severe under all the circumstances of this case. The appellant distributed cocaine to another service member. This was not an impulsive act on appellant's part. The appellant told the requesting airman to return later to pick up the cocaine. There was clearly time for the appellant to reflect on what he was intending to do. Nonetheless, he went ahead and distributed the cocaine to another service member. Drug abuse is a serious threat to the discipline and readiness of the military. While the appellant's 20-month military record was good, it was nonetheless a short military record. Many first-term airmen compile an equally good record, without being convicted of possession and distribution of cocaine.

The approved findings of guilty and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Art. 66(c), UCMJ;

United States v. Reed, 54 M.J. 37, 41 (2002). Accordingly the approved findings and sentence are

AFFIRMED.

OFFICIAL

DEIRDRE A. KOKORA, Major, USAF
Chief Commissioner