

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant EMILE COLON
United States Air Force

ACM S31191

20 September 2007

Sentence adjudged 10 July 2006 by SPCM convened at Kunsan Air Base, Republic of Korea. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

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

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of two specifications of signing a false official document and one specification of stealing, on divers occasions, currency of the United States, military property, of a value over five hundred dollars, in violation of Articles 107 and 121, UCMJ, 10 U.S.C. §§ 907, 921. A military judge sitting alone as a special court-martial sentenced the appellant to a bad-conduct discharge, confinement for 12 months, and reduction to E-1. The convening authority approved the sentence as adjudged.

On appeal, the appellant asserts his sentence is inappropriately severe. We find no merit in the appellant's assignment of error and affirm.

We “may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved.” Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering 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. Healy*, 26 M.J. 394 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). 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 engage in the exercise of clemency. *Healy*, 26 M.J. at 395-96. 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.” *Snelling*, 14 M.J. at 268 (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

We reviewed the record of trial, the error assigned by the appellant and the government's reply thereto. The appellant collected over \$15,000 in unauthorized entitlements over a fifteen month period as a result of his crimes. He then received the benefit of his bargain with the convening authority by having his case tried in a special vice general court-martial forum. We do not believe the military judge's sentence is inappropriately severe for this appellant, who knew he was collecting unauthorized entitlements for several months and then not only falsified one Air Force Form 594¹ but then another to increase the amount of money he was stealing. The appellant also continued his criminal behavior even after his commander briefed the unit that people were being investigated for housing allowance fraud and would be caught. After a careful review of the appellant's case, we hold that the appellant's sentence is not 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;

¹ An Air Force Form 594 is an Application and Authorization to Start, Stop or Change Basic Allowance for Quarters (BAQ) or Dependency Redetermination.

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

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF
Clerk of Court