

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant MATTHEW L. DAVIS
United States Air Force

ACM 35548

25 May 2004

Sentence adjudged 7 January 2003 by GCM convened at Kadena Air Base, Japan. Military Judge: David F. Brash (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, forfeiture of all pay and allowances for 9 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Brandon A. Burnett, Major Terry L. McElyea, and Major Antony B. Kolenc.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Tracey L. Printer.

Before

STONE, MOODY, and JOHNSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error,¹ and the government's reply thereto. We find the appellant's sentence is not inappropriately severe. Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires that we affirm only so much of the sentence as we find "should be approved." In determining sentence appropriateness, we must exercise our judicial powers to assure that justice is done and that the appellant receives the punishment he or she deserves. 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, including the nature and seriousness

¹ This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

of the offenses and the character of the appellant's service. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We considered the nature and seriousness of his criminal behavior (entering the dormitory rooms of two sleeping airmen with the intent to commit an indecent assault and, in fact, indecently assaulting one of them) and all matters in extenuation and mitigation, including the appellant's six years of otherwise dedicated service. Applying the legal standard stated above to the facts of this case, we find 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner