

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant **BRANDON M. DONOVAN**
United States Air Force

ACM S31330

22 August 2008

Sentence adjudged 30 May 2007 by SPCM convened at Columbus Air Force Base, Mississippi. Military Judge: Jennifer A. Whittier (sitting alone).

Approved sentence: Bad-conduct discharge and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Phillip T. Korman.

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

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Consistent with the appellant's pleas, a military judge sitting as a special court-martial convicted him of one specification of dereliction of duty in violation of Article 92, UCMJ, 10 U.S.C. § 892, and two specifications of adultery in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge sentenced him to a bad-conduct discharge and reduction to E-1. The convening authority approved the sentence as adjudged. The appellant asserts that the portion of the sentence extending to a bad-conduct discharge is inappropriately severe.

Sentence Appropriateness

This Court reviews 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 offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007); *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). We have a great deal of discretion in determining whether a particular sentence is appropriate, but 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); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004), *aff'd in part and rev'd in part on other grounds*, 60 M.J. 368 (C.A.A.F. 2004).

The appellant's dereliction of duty stemmed from his failure to obey a lawful general regulation regarding the prohibition of sexual conduct between recruiters and applicants. The applicant was in the Air Force Delayed Entry Program when the appellant, while in uniform and driving a government owned vehicle, wrongfully accepted sexual advances by the applicant when she performed oral sex on the appellant as he drove from a high school recruiting event back to the recruiting office. The two other specifications dealt with the appellant's wrongful sexual intercourse with two other women at the recruiting office while the appellant was married to another woman. One of the women was a former recruit of the appellant and both women assisted the appellant with minor administrative duties at the recruiting office. The appellant's misconduct was significant. Considering those offenses and weighing the appellant's service record and other matters properly contained within the record, the approved sentence is fair, just and appropriate.

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



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