

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman DANIEL A. DUGAN
United States Air Force**

ACM 34477 (f rev)

25 October 2004

Sentence adjudged 24 February 2004 by GCM convened at Eglin Air Force Base, Florida. Military Judge: Linda S. Murnane.

Approved sentence: Bad-conduct discharge, confinement for 150 days, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Carlos L. McDade, Major Terry L. McElyea, and Major James M. Winner.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer.

Before

**MALLOY, JOHNSON, and GRANT
Appellate Military Judges**

**OPINION OF THE COURT
UPON FURTHER REVIEW**

GRANT, Judge:

This case is before our Court for further review because the original sentence was set aside by the United States Court of Appeals for the Armed Forces (CAAF). On 16 December 2000, pursuant to mixed pleas, the appellant was convicted by a general court-martial of failure to go, absence without authority terminated by apprehension, wrongful use of methylenedioxymethamphetamine (ecstasy), dishonorably failing to pay a just debt, and wrongful use and possession of a false military identification card, in violation of Articles 86, 112a, and 134, UCMJ, 10 U.S.C. §§ 886, 912a, 934. A panel of officers sentenced him to a bad-conduct discharge, confinement for 9 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved only so much

of the sentence as provided for a bad-conduct discharge, confinement for 9 months, forfeiture of all pay and allowances until such time as the approved confinement was lawfully terminated and, thereafter, forfeiture of \$695.00 pay per month until the bad-conduct discharge was executed, and reduction to E-1.

On 20 March 2002, this Court affirmed the findings and sentence. On 2 June 2003, CAAF affirmed the findings, but set aside the sentence and returned the case for a factfinding hearing pursuant to *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967), to resolve the appellant's unlawful command influence claim. Further, they authorized the military judge conducting the factfinding hearing to order a sentence rehearing. *United States v. Dugan*, 58 M.J. 253 (C.A.A.F. 2003). On 8 December 2003, the factfinding hearing was conducted at Eglin Air Force Base, Florida. The military judge made findings of fact and conclusions of law after which he ordered a sentence rehearing.

On 23 and 24 February 2004, the sentence rehearing was held and a panel of officer members sentenced the appellant to a bad-conduct discharge, confinement for 150 days, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the adjudged sentence on 14 May 2004.

The appellant has submitted the record and new action for further review on its merits. Our review discloses no material error. 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

ANGELA M. BRICE
Clerk of Court