UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant KENNETH J. EAVES
United States Air Force

ACM 37406

15 September 2010

Sentence adjudged 09 December 2008 by GCM convened at McConnell Air Force Base, Kansas. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 50 years, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Marla J. Gillman, and Major Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Don M. Christensen, Lieutenant Colonel Jeremy S. Weber, Major Coretta Gray, and Gerald R. Bruce, Esquire.

Before

BRAND, GREGORY, and ROAN
Appellate Military Judges

PER CURIAM:

Pursuant to his pleas, a general court-martial composed of a military judge convicted the appellant of one specification of disobeying a lawful order, one specification of divers rape of a child between the ages of 12 and 16, one specification of divers rape, one specification of divers indecent acts with a child under the age of 16, three specifications of divers indecent acts, one specification of divers indecent assault, one specification of divers indecent liberties with a child under the age of 16, one specification of divers sodomy of a child between the ages of 12 and 16, one specification of divers sodomy, and one specification each of knowingly producing and possessing visual depictions of a minor engaged in sexually explicit conduct in violation of Articles

90, 120, 125, and 134, UCMJ, 10 U.S.C. §§ 890, 920, 925, 934. Contrary to his pleas, the appellant was convicted of making a false official statement and engaging in indecent conduct in violation of Articles 107 and 120, UCMJ, 10 U.S.C. §§ 907, 920. The adjudged sentence consists of a dishonorable discharge, 50 years of confinement, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved every portion of the sentence except the forfeiture of all pay and allowances. On appeal, the appellant asks this Court to reassess the sentence to confinement to some period less than 50 years. As the basis for his request, the appellant contends that, in light of his character, lengthy military service, and the impact to his family, his sentence is inappropriately severe.[1] After a careful review of the record of trial, to include the appellant's post-trial submissions, we disagree.

Background

The appellant began to sexually molest his biological daughter, KE, when she was 12 years old. The sexual abuse included repeated acts of rape, sodomy, indecent liberties, and other indecent conduct with KE over nearly a five-year period. Additionally, the appellant took more than 100 pictures of KE in various stages of undress and in a number of suggestive sexual poses and maintained them on his personal computer. The appellant admits to his misconduct and proclaims his desire to be rehabilitated and to move on with his life. The appellant contends that his sentence to 50 years of confinement is too severe and asks this Court for relief.

Sentence Appropriateness

We review 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 the offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *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).

Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we 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). The task of granting clemency, which "involves bestowing mercy—treating an accused with less rigor than he deserves," is assigned to the convening authority and other officials. *Healy*, 26 M.J. at 395-96.

The appellant asserts that his long term of confinement means he will be unable to care and provide for his wife and daughters and his prolonged absence will have a significantly adverse effect on his family. He argues that he has taken full responsibility

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

for his actions, apologized to his daughter, and has shown that he has the capacity to be fully rehabilitated. He states that he can be a productive member of society if his confinement is reduced.

The appellant faced a maximum punishment of confinement for life without the possibility of parole. While 50 years is certainly a lengthy period of incarceration, the appellant's horrific and repeated molestation of his daughter warrants the punishment received. We hold that the approved sentence is not inappropriately severe, having given individualized consideration to this particular appellant, the nature of the offenses, the appellant's record of service, and all matters in the record of trial.

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
Clerk of the Court