

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic SARAH R. ELLANO
United States Air Force

ACM S31102

31 August 2007

Sentence adjudged 13 April 2006 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Joseph Cole (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 3 months.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Christopher L. Ferretti.

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

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with her pleas, the appellant was found guilty of use of marijuana on divers occasions and use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The military judge, sitting alone as a special court-martial, sentenced the appellant to a bad-conduct discharge and confinement for three months. The convening authority approved the findings and sentence as adjudged. Pursuant to the military judge's ruling on a defense motion, the appellant was given 16 days of administrative credit against her adjudged confinement for conditions on liberty tantamount to pretrial confinement, and an additional 16 days of credit under Rule for Courts-Martial 305(k). She was also credited with the 72 days she spent in pretrial confinement.

In her sole assignment of error, the appellant resurrects the illegal pretrial punishment aspect of the motion for appropriate relief she raised and litigated before the military judge. She claims that the time she spent in “Transition Flight” prior to being placed in pretrial confinement amounted to illegal pretrial punishment and is deserving of appropriate relief under Article 13, UCMJ, 10 U.S.C. § 813. The focus of her motion at trial and assignment of errors before this Court is the 16-day period between 15 January 2006 and 30 January 2006. At the beginning of this period the leadership of Transition Flight implemented new rules for flight members which were significantly more restrictive than previous rules. At the end of the period, the appellant was removed from Transition Flight and placed in pretrial confinement.

Whether an appellant is entitled to credit for a violation of Article 13 presents a “mixed question of fact and law.” *United States v. McCarthy*, 47 M.J. 162, 165 (C.A.A.F. 1997) (quoting *Thompson v. Keohane*, 516 U.S. 99 (1995)). The test is whether there was an intent to punish or stigmatize a person awaiting disciplinary action. *United States v. Phillips*, 42 M.J. 346, 349 (1995). We will not overturn a military judge’s findings of fact unless they are clearly erroneous. *United States v. Mosby*, 56 M.J. 309, 310 (C.A.A.F. 2002). We “review *de novo* the ultimate question of whether an appellant is entitled to credit for a violation of Article 13.” *Id.*

The military judge received evidence and heard argument prior to finding that, while the restrictions placed on the appellant were tantamount to pretrial confinement, they did not reach the level of illegal pretrial punishment under Article 13. He then awarded a total of 32 days of credit, as noted above. We have carefully reviewed the evidence, arguments by counsel, and the military judge’s findings of fact. We agree with the military judge’s factual findings and hold that they are not clearly erroneous. Further, based on these factual findings, we hold that the appellant was not illegally punished during the 16-day period in question – or any other period – and is entitled to no additional sentence relief under Article 13, UCMJ.

Conclusion

The 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.

