

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Airman Basic CHARLES E. ERVIN, JR.**  
**United States Air Force**

**ACM S31530**

**21 May 2009**

Sentence adjudged 30 June 2008 by SPCM convened at Ramstein Air Base, Germany. Military Judge: Jennifer L. Cline (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 10 months.

Appellate Counsel for the Appellant: Captain Michael A. Burnat and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Major Jeremy S. Weber, Major Kimani R. Eason, and Gerald R. Bruce, Esquire.

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 general court-martial convicted him of divers uses of marijuana and ecstasy, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged and approved sentence consists of a bad-conduct discharge and confinement for 10 months.

The appellant asserts that his sentence is inappropriately severe in light of his assistance to the Air Force Office of Special Investigations (OSI).<sup>\*</sup> We find to the contrary and affirm.

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<sup>\*</sup> This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

### *Sentence Appropriateness*

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382 (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), *aff'd*, 65 M.J. 310 (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); *Rangel*, 64 M.J. at 686.

The appellant arrived at his first duty station on 30 May 2007. By early November 2007 he began using marijuana. Significantly, within days of his first usage he was called in by the OSI and admitted to using both marijuana and ecstasy. Despite being questioned, he continued to use marijuana on repeated occasions over the next six months. In addition to continued drug usage despite being on notice that his conduct was criminal, the appellant was also disciplined for driving while intoxicated, assault and battery, failure to go to work, and driving without a license during the months prior to his trial. While the appellant's work with the OSI is commendable, the scope and degree of his misconduct in every respect clearly demonstrates that the bad-conduct discharge is appropriate. We are satisfied that it is not inappropriately severe.

### *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