

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic JOSHUA A. ESKINS
United States Air Force**

ACM 35628

3 June 2005

Sentence adjudged 20 May 2003 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: Steven B. Thompson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 4 years, and forfeiture of all pay and allowances.

Appellate Counsel for Appellant: Major Andrea M. Gormel.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major M. Leeann Summer.

Before

MALLOY, ORR, and JOHNSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error,¹ and the government's reply thereto. We find the appellant's sentence is not inappropriately severe. Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires that we affirm only so much of the sentence as we find "should be approved." In determining sentence appropriateness, we must exercise our judicial powers to assure that justice is done and that the appellant receives the punishment he or she deserves. Performing this function does not authorize this Court to exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this responsibility is to give individualized consideration to an appellant, including the nature and seriousness of the offenses, and the character of the appellant's service. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We considered the appellant's short career (less than 2

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

years), the seriousness of his pattern of criminal behavior (desertion, failure to obey a lawful order, divers use of cocaine, divers use of methamphetamine, divers use of marijuana, possession of cocaine with the intent to distribute to a military member and his spouse, divers distribution of cocaine, divers distribution of hydrocodone to a military member, wrongful appropriation of property belonging to a military member, obstruction of justice, broken restriction on divers occasions, and unlawful entry into the home of a military member), and all matters in aggravation, extenuation, and mitigation. Applying the legal standard stated above to the facts of this case, we find the appellant's sentence is not inappropriately severe.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court