UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ANDREW C. EVANS
United States Air Force

ACM S31787

18 July 2011

Sentence adjudged 22 February 2010 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Grant L. Kratz (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, forfeiture of $964.00 pay per month for 7 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford and Captain Nathan A. White.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Deanna Daly; Major Coretta E. Gray; and Gerald R. Bruce, Esquire.

Before

BRAND, GREGORY, and ROAN
Appellate Military Judges

PER CURIAM:

A special court-martial composed of military judge alone convicted the appellant in accordance with his pleas of one specification of absence without leave and one specification of larceny, in violation of Articles 86 and 121, UCMJ, 10 U.S.C. §§ 886, 921. The court sentenced him to a bad-conduct discharge, confinement for 7 months, forfeiture of $964.00 pay per month for 7 months, and reduction to the grade of E-1. In accordance with a pretrial agreement, the convening authority approved confinement for 5 months and the remainder of the sentence as adjudged. The appellant argues that the

sentence is inappropriately severe.[1] Finding no error to the substantial prejudice of the appellant, we affirm.

After graduating from technical training school at Lackland AFB, TX, in June 2009, the appellant was granted 10 days of leave to visit his home in Pennsylvania, and was ordered to report to his new assignment at Whiteman AFB, MO, by 12 July 2009. The appellant departed his parents' home on 27 June, but decided not to report to Whiteman and "instead, decided to try to start a new life to be happy." The appellant told the military judge that during this time he was very depressed and had suicidal thoughts.[2] At the urging of his parents, the appellant returned home in November, informed his commander of his location, and was taken into custody.[3]

During his absence, the appellant dropped two empty deposit envelopes into a Pennsylvania State Employees Credit Union ATM. Neither envelope contained any money, but the appellant represented that they contained a total of about $3,000.00, and the ATM credited his account with the deposits. Before the envelopes were opened to reveal the fraud, he withdrew the money. He repaid it before trial.

The appellant argues that his sentence is inappropriately severe and requests that we not affirm the adjudged and approved bad-conduct discharge. We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 384-85 (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. 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). After carefully examining the submissions of counsel, the appellant's military record, and all the facts and circumstances surrounding the offenses of which he was convicted, we find the appellant's sentence appropriate. While the matters cited by the appellant are appropriate considerations in clemency, they do not show that the approved sentence is inappropriately severe.

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

[2] A sanity board concluded that the appellant was competent to stand trial and was mentally responsible. The military judge thoroughly covered the possibility of a mental responsibility defense with the appellant and his counsel, who each affirmed that it did not apply.

[3] The military judge awarded 105 days of pretrial confinement credit and 12 additional days for illegal pretrial confinement based on conditions in civilian custody.

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 the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court