

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Staff Sergeant TORREY T. FENN
United States Air Force**

ACM S31706

27 April 2010

Sentence adjudged 12 August 2009 by SPCM convened at McGuire Air Force Base, New Jersey. Military Judge: Thomas Dukes (sitting alone).

Approved sentence: Bad-conduct discharge, hard labor without confinement for 2 months, restriction to McGuire Air Force Base, New Jersey for 2 month, fine of \$900.00, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Maria A. Fried, Major Shannon A. Bennett, and Captain Reggie D. Yager.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Colonel George F. May, Lieutenant Colonel Jeremy S. Weber, and Gerald R. Bruce, Esquire.

Before

BRAND, HELGET, and GREGORY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of stealing military property of a value of more than \$500 and one specification of willful dereliction of duty, in violation of Articles 121 and 92, UCMJ, 10 U.S.C. §§ 921, 892. The approved sentence consists of a bad-conduct discharge, hard labor without

confinement for two months, restriction to the limits of base for two months, a \$900 fine, and reduction to E-1.¹

The issue on appeal is whether the sentence, which includes a bad-conduct discharge, is too severe.²

Background

The appellant was a vehicle control officer assigned to McGuire Air Force Base, New Jersey. Over a period of 18 months, the appellant misused government services administration credit cards to purchase fuel for his privately owned vehicle. There were approximately 38 separate transactions totaling in excess of \$1,717.

According to the appellant's oral unsworn statement, he ended up in this situation because he was having problems dealing with his adoption as a child, his religious confusion, his lack of relationship with his family, his drinking, and his loneliness. However, according to a defense sentencing witness, the appellant "stole because it made him feel better." By the time of trial, the appellant had repaid \$800.

Sentence Appropriateness

We "may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Healy*, 26 M.J. 394, 396 (C.M.A. 1988).

The appellant, a non-commissioned officer with 13 years of service, used his position as a vehicle control officer to steal from the military and was willfully derelict in his duties. After a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the appellant's sentence was 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;

¹ The appellant and the convening authority entered into a pretrial agreement in which the appellant agreed to plead guilty to the charges and specifications in exchange for the convening authority's promise not to approve confinement in excess of 90 days.

² This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

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

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal.

STEVEN LUCAS, YA-02, DAF
Clerk of the Court