

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman DARIUS G. FRAZIER
United States Air Force

ACM S31313

31 October 2008

Sentence adjudged 23 April 2007 by SPCM convened at Cannon Air Force Base, New Mexico. Military Judge: Gary M. Jackson.

Approved sentence: Bad-conduct discharge, confinement for 3 months, forfeiture of \$867.00 pay per month for 3 months, reduction to E-1, and a reprimand.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Matthew S. Ward, and Major Steven R. Kaufman.

Before

BRAND, FRANCIS, and JACKSON
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 failure to go and two specifications of wrongful use of cocaine, in violation of Articles 86 and 112a, UCMJ, 10 U.S.C. §§ 886, 912a. The approved sentence consists of a bad-conduct discharge, confinement for 3 months, forfeitures of \$867.00 pay per month for 3 months, reduction to E-1, and a reprimand. On appeal, the appellant avers his sentence to a bad-conduct discharge is inappropriately severe. Disagreeing with the appellant, we affirm.

Background

The appellant used cocaine on two separate occasions. He first used on or about 15 January 2007, and then he used again on or about 1 February 2007, after his random urinalysis on 18 January 2007. Despite being reminded, he failed to report for his random urinalysis in a timely fashion.

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. *See United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The appellant wrongfully used cocaine on two separate occasions, including using after a random urinalysis. In addition, he failed to report for his urinalysis in a timely manner. 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.

Timely Post-Trial Processing

We note this case has been with this Court in excess of 540 days. In this case, the overall delay between the trial and completion of review by this Court is facially unreasonable. Because the delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice. *See United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). When we assume error but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *See United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case.

Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt and that no relief is warranted.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

Accordingly, the approved findings and sentence are

AFFIRMED.

Judge JACKSON did not participate.

OFFICIAL



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