UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JOHN D. FREDENBURG
United States Air Force

ACM 35880 (f rev)

18 September 2006

Sentence adjudged 17 December 2003 by GCM convened at Moody Air Force Base, Georgia. Military Judge: Lance B. Sigmon (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 10 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Colonel Nikki A. Hall, Lieutenant Colonel Brandon A. Burnett, Major Terry L. McElyea, Major L. Martin Powell, and Major David P. Bennett.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Captain C. Taylor Smith, and Captain Jefferson E. McBride.

Before

ORR, JACOBSON, and THOMPSON
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court on remand from the Court of Appeals for the Armed Forces (CAAF). *United States v. Fredenburg*, 63 M.J. 262 (C.A.A.F. 2006). In *United States v. Fredenburg*, ACM 35880, (A.F. Ct. Crim. App. 21 Nov 2005) (unpub. op.), we modified the findings and reassessed the sentence. In the text of our opinion we inadvertently included, in our list of the many specifications to which the appellant providently pled guilty, a specification that had actually

been withdrawn by the convening authority. The appellant petitioned our superior court to find that we abused our discretion by affirming his sentence where we erroneously commented that he was convicted of wrongful possession of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. On appeal, CAAF affirmed our decision as to the approved findings, as modified, but reversed as to sentence. They returned the case to us with instructions that we could either reassess the sentence or order a rehearing.

We conclude we can reassess the sentence in accordance with established criteria. A rehearing on sentence is therefore unnecessary. *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002); *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986).

After careful consideration of the entire record, we are satisfied that the sentence of a dishonorable discharge, confinement for 10 years, forfeiture of all pay and allowances, and reduction to E-1 is the appropriate sentence for this offender and his crimes. In reaching this conclusion, we first emphasize that the inclusion of the reference to the methamphetamine possession specification in our original opinion was inadvertent and was not included in our discussions regarding our original reassessment of the appellant's sentence. Second, even if it had been considered, the effect on the appellant's sentence arising from the specification alleging possession of "some amount" of methamphetamine would have been almost inconsequential, when considered in relation to the appellant's long list of serious crimes. The appellant pled guilty to attempting to manufacture methamphetamine, divers occasions of conspiracy to distribute ecstasy, possession of approximately 6,000 grams of ecstasy,[*] divers distribution of approximately 1,900 grams of ecstasy, divers use of ecstasy, distribution of cocaine, importing cocaine and ecstasy into the United States, and traveling in interstate commerce with the intent to distribute ecstasy on divers occasions. These are the crimes we considered when we originally reassessed the sentence, and we again consider in today's reassessment.

On 30 June 2006, the appellant submitted a motion, which we granted, for leave to file a supplemental assignment of error. In his supplemental assignment of error, submitted pursuant to *United States v. Grostefon,* 12 M.J. 431 (C.M.A. 1982), the appellant claims that his case has not been reviewed in a timely fashion. We find the appellant's assertion to be without merit.

[*] According to the stipulation of fact signed by the appellant, he purchased 20,000 ecstasy pills in Germany, placed them in his stereo speakers, and shipped them to the United States with his household goods during his permanent change of station move to Moody Air Force Base, Georgia. He admitted that he purchased the pills with the specific intent to sell them in the United States.

Our review of the appellant's record does not reveal a complaint regarding timeliness prior to his 30 June 2006 supplemental assignment of error. This Court's original decision was issued approximately 716 days after the conclusion of the appellant's trial. This time included 104 days from trial completion to convening authority action, 19 days from action to docketing, 198 days from docketing to filing of briefs, and 395 days from filing of briefs to decision. We do not find this timeline to be unreasonable, nor do we find any plausible claim of prejudice resulting from the delay, especially given the fact that the appellant made no complaints regarding timeliness during this period. *See United States v. Moreno*, 63 M.J. 129, 136-38 (C.A.A.F. 2006). Significantly, the record does not indicate that the appellant complained to our superior court, in his appellate filings, that the 716 days was unreasonable or caused him prejudice in any way. As for the period between 28 April 2006 and the issuance of this opinion, we do not find the length of time utilized to prepare briefs and carefully consider the appellant's claims to be unreasonable. Thus, we hold that there is no excessive post-trial delay in this case, and the appellant has shown no prejudice. We therefore reject the appellant's supplemental assignment of error.

The findings and the sentence, as reassessed, 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 findings, as amended, and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator