

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class DARONE R. FRIERSON
United States Air Force**

ACM S30986

16 February 2006

Sentence adjudged 10 August 2005 by SPCM convened at Barksdale Air Force Base, Louisiana. Military Judge: Barbara E. Shestko (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Declined representation by counsel.

Before

**BROWN, MOODY, and FINCHER
Appellate Military Judges**

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

MOODY, Senior Judge:

The appellant was convicted, in accordance with his pleas, of one specification of conspiracy to discharge a firearm under circumstances that endanger human life; one specification of damage to property by discharging a firearm into a car; and one specification of wrongful discharge of a firearm, in violation of Articles 81, 109, and 134, UCMJ, 10 U.S.C. §§ 881, 909, 934. The special court-martial, consisting of a military judge sitting alone, sentenced the appellant to a bad-conduct discharge, confinement for 4 months, and reduction to E-1. The convening authority approved the findings and sentence as adjudged. The appellant has submitted this case for our consideration after having waived his right to appellate counsel. We are considering the issue of sentence appropriateness sua sponte.

The appellant's acquaintance, Senior Airman (SrA) Blade, had an altercation with Airman First Class (A1C) L, during which A1C L pointed a gun at SrA Blade. Subsequently, SrA Blade discussed with the appellant and others his desire to "scare" A1C L. SrA Blade decided to shoot at A1C L's car using his privately owned firearm. The appellant drove SrA Blade to A1C L's apartment, where SrA Blade fired shots at A1C L's car, causing over \$1,300 in damage. The appellant then returned SrA Blade to his residence and disposed of the firearm. At trial, the appellant was tried as a principal in that he aided and abetted SrA Blade's criminal conduct.

Sentence appropriateness is determined by examining the nature of the offense and "the character of the offender." *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). It "involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). Sentence comparison is "an *aspect* of sentence appropriateness." *Snelling*, 14 M.J. at 268. *See also United States v. Wacha*, 55 M.J. 266 (C.A.A.F. 2001).

We have taken into account all the properly admitted evidence. We have paid particular attention to the seriousness and potential dangerousness of the appellant's misconduct as well as to the matters he presented in his own defense. These matters include the absence of any disciplinary record and laudatory comments in his character references. We have also taken judicial notice of the sentence that SrA Blade received after having been convicted of similar charges. *See Appendix*. Based on the above, we hold that an appropriate sentence in this case is confinement for 4 months and a reduction to E-1.

The approved findings and sentence, as modified, 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 sentence, as modified, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

APPENDIX

DNA PROCESSING REQUIRED 10 U.S.C. § 1565

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 2D BOMB WING (ACC)
BARKSDALE AIR FORCE BASE LOUISIANA 71110-2270

30 June 2005

Special Court-Martial Order
No. 3

SENIOR AIRMAN MALACHI J. BLADE, United States Air Force,
2d Civil Engineer Squadron was arraigned at Barksdale Air Force Base, Louisiana, on the
following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 81. Plea: G. Finding: G.

Specification: Did, within or near the state of Louisiana, on or about 29 January 2005, conspire
with Airman First Class Darone Frierson to commit an offense under the Uniform Code of
Military Justice, to wit: discharging a firearm under such circumstances as to endanger human
life, and in order to effect the object of the conspiracy the said SENIOR AIRMAN MALACHI J.
BLADE did wrongfully and willfully discharge a firearm, to wit: a .45 caliber automatic
handgun, in a parking lot into an automobile owned by Airman First Class Brandon Lee, under
circumstances such as to endanger human life. Plea: G. Finding: G.

CHARGE II: Article 109. Plea: G. Finding: G.

Specification: Did, within or near the state of Louisiana, on or about 29 January 2005, willfully
and wrongfully damage by shooting it with a firearm, an automobile, the amount of said damage
being in the sum of about \$1,368.55, the property of Airman First Class Brandon Lee. Plea: G.
Finding: G.

CHARGE III: Article 134. Plea: G. Finding: G.

Specification: Did, within or near the state of Louisiana, on or about 29 January 2005,
wrongfully and willfully discharge a firearm, to wit: a .45 caliber automatic handgun, in a
parking lot into an automobile owned by Airman First Class Brandon Lee, under circumstances
such as to endanger human life. Plea: G. Finding: G.

05138

SENTENCE

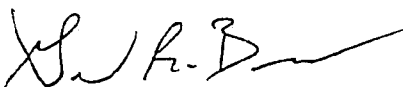
Sentence adjudged by military judge alone on 8 June 2005: Reduction to the grade of E-2, forfeiture of \$100.00 pay per month for four months, and confinement for 130 days.

ACTION

In the case of SENIOR AIRMAN MALACHI J. BLADE, United States Air Force,
2d Civil Engineer Squadron, the sentence is approved and will be executed. The Air Force
Corrections System is designated for the purpose of confinement, and the confinement will be
served therein or elsewhere as the Director, Air Force Corrections, may direct.

/s/Michael R. Moeller
MICHAEL R. MOELLER, Colonel, USAF
Commander,

FOR THE COMMANDER

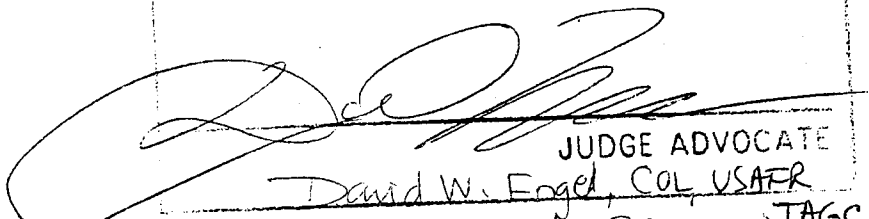


GERALD R. BRUCE, Lt Col, USAF
Staff Judge Advocate

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS EIGHTH AIR FORCE (ACC)
BARKSDALE AIR FORCE BASE, LOUISIANA 71110

ART 64a, UCMJ Review:

The Court has jurisdiction over the accused and each offense with an approved finding of guilty. Each specification with an approved finding of guilty stated an offense. Findings and sentence are correct in law and fact.



JUDGE ADVOCATE
David W. Engel, COL, USAFR
7 July 2005 JAGC

DISTRIBUTION:

- 1 – Amn Malachi J. Blade, 2 CES, 334 Davis Avenue West Suite 200, Barksdale AFB LA 71110 (ACC)
- 1 – Col Mary M. Boone, AFLSA/Central Circuit, 550 D Street West Suite 3, Randolph AFB TX 78150-4529 (MJ)
- 1 – Lt Col Michael O’Sullivan, AFLSA/Central Circuit, 550 D Street West Suite 3, Randolph AFB TX 78150-4529 (CTC)
- 1 – Capt John M. Page, 2 BW/JA, 334 Davis Avenue West Suite 100, Barksdale AFB LA 71110-2077 (TC)
- 1 – Capt Jefferson E. McBride, AFLSA/ADC, 414 Curtiss Road Suite 300, Barksdale AFB LA 71110-0000 (DC)
- 1 – 2 BW/CC, 109 Barksdale Boulevard West Suite 100, Barksdale AFB LA 71110-2164
- 1 – 2 CES/CC, 334 Davis Avenue West Suite 200, Barksdale AFB LA 71110
- 1 – 2 MSG/CC, 841 Fairchild Avenue Suite 100, Barksdale AFB LA 71110-2270
- 1 – 2 SFS/SFOR, 425 Lindbergh Road East Suite 202, Barksdale AFB LA 71110-2073
- 1 – CPTS/FMF, 345 Davis Avenue West Suite 300, Barksdale AFB LA 71110-2074
- 4 – AFLSA/JAJM, 112 Luke Avenue Room 343, Bolling AFB DC 20032-0000
- 1 – 8 AF/CC, 66 Kenney Avenue Suite 200, Barksdale AFB LA 71110-2290
- 1 – HQ AFPC/DPSFCM, 550 C Street West Suite 21, Randolph AFB TX 78150-4723
- 4 – 2 MSS/DPMAE/DPMPF/DPMPD/DPMAR, 345 Davis Avenue West Suite 200, Barksdale AFB LA 71110-2073
- 1 – 2 BW/JA, 334 Davis Avenue West Suite 100, Barksdale AFB LA 71110-2077
- 1 – 2 SFS/SFOI, 425 Lindbergh Avenue, Barksdale AFB LA 71110-0000