

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman JOHN E. FULLER JR.
United States Air Force**

ACM S30383

29 March 2005

Sentence adjudged 27 March 2003 by SPCM convened at Offutt Air Force Base, Nebraska. Military Judge: Steven B. Thompson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Captain C. Taylor Smith.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the appellant's assignment of error, and the government's reply thereto. The appellant contends his trial defense counsel was ineffective for not offering documentary evidence of his extensive volunteer efforts during the sentencing phase of his trial.¹ In conducting our de novo review of claims of ineffective representation, we apply the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See also *United States v. Quick*, 59 M.J. 383, 387 (C.A.A.F. 2004); *United States v. Davis*, 98-0497/NA (4 Mar 2005). The appellant has not established a factual foundation for his claim of ineffectiveness. Our review of the record reveals the military judge was provided ample evidence of the appellant's volunteer endeavors (as reflected in the appellant's unsworn statement and his written

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

performance evaluations). The trial defense counsel used this information to good effect during his sentencing and rebuttal arguments. Consequently, we conclude the appellant has failed to meet his heavy burden of establishing either deficient performance or prejudice under *Strickland* and *Quick*.

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 findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator