

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class KENNETH A. GARCIA
United States Air Force**

ACM 36090

29 March 2006

Sentence adjudged 19 August 2004 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Ronald A. Gregory.

Approved sentence: Bad-conduct discharge, hard labor without confinement for 30 days, restriction to Shaw Air Force Base for 30 days, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Christopher S. Morgan.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

The appellant was tried by officer members sitting as a general court-martial at Shaw Air Force Base (AFB), South Carolina. Pursuant to his plea of guilty, he was convicted of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The appellant was sentenced to a bad-conduct discharge, hard labor without confinement for 30 days, restriction to Shaw AFB for 30 days, and reduction to E-1. The convening authority approved the findings and sentence adjudged.

We have examined the record of trial, the assignment of error, and the government's reply thereto. We conclude the military judge abused his discretion when he limited the defense's case in extenuation and mitigation by excluding evidence that the

appellant's squadron section commander and former supervisor believed the appellant could continue to be an asset to the Air Force and wanted to continue to work with him. *See United States v. Griggs*, 61 M.J. 402, 410 (C.A.A.F. 2005). We hold that the evidence excluded from these fellow servicemembers may have had a significant impact on the court members, given the value that military members place on respect from peers and supervisors. *See Id.*¹ We therefore conclude the excluded evidence may have substantially influenced the adjudged sentence in this case.

The findings are approved. The sentence is set aside. The record of trial is returned to The Judge Advocate General. A rehearing on sentence is authorized.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

¹ During the presentencing portion of the case, the prosecution presented the appellant's Personal Data Sheet and his Enlisted Performance Report, which was a "firewall" 5. The defense presented the testimony of two witnesses, the appellant's oral unsworn statement, numerous character statements, letters of support, certificates of appreciation, and a letter of evaluation covering the appellant's combat service in Iraq.