

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman BRANDON M. GAYOS
United States Air Force

ACM S31521

18 May 2009

Sentence adjudged 12 June 2008 by SPCM convened at Travis Air Force Base, California. Military Judge: Nancy Paul (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 45 days, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Imelda L. Paredes, and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Major Jeremy S. Weber, Captain G. Matt Osborn, and Gerald R. Bruce, Esquire.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Consistent with the appellant's pleas, a military judge sitting as a special court-martial convicted him of four specifications of uttering bad checks, with intent to defraud, in violation of Article 123a, UCMJ, 10 U.S.C. § 923a.¹ The adjudged and approved sentence consists of a bad-conduct discharge, 45 days confinement, and

¹ The appellant pled guilty under a pretrial agreement by which the convening authority agreed to approve a period of confinement no greater than two months if a punitive discharge was adjudged and no more than four months if no punitive discharge was adjudged.

reduction to the grade of E-1. The appellant asserts his sentence is inappropriately severe.² Finding no error, we affirm.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005); *United States v. Christian*, 63 M.J. 714, 717 (A.F. Ct. Crim. App. 2006). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006). We have a great deal of discretion in determining whether a particular sentence is appropriate but are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

The record indicates that over a period of roughly four months, the appellant wrote 23 bad checks, totaling slightly more than \$4,000, to four different recipients. Although some of the funds had been repaid by the time of trial through a combination of voluntary payments and garnishment of the appellant's pay, a significant portion still remained unpaid. Further, one of the victims, Airman First Class (A1C) KA, experienced significant financial difficulty of his own as a result of the appellant's offenses. When the appellant's checks bounced, the Base Exchange where A1C KA had cashed them turned to A1C KA for reimbursement, ultimately garnishing A1C KA's pay for two months. That in turn damaged A1C KA's ability to pay his own bills in a timely manner, forcing some bills into collections and damaging A1C KA's credit rating. A1C KA was still playing catch-up on his own bills at the time of trial.

It is also significant that although the appellant was apparently a good duty performer, he had a poor disciplinary record. Sentencing evidence introduced by the government at trial indicates that he received punishment under Article 15, UCMJ, 10 U.S.C. § 815, in April 2004 for two specifications of communicating indecent language to female airmen and one specification of indecent exposure.

Given the seriousness of the appellant's offenses, and considering his time in service, military record, and all other evidence properly admitted at trial, we find nothing inappropriately severe in the approved punishment. The approved sentence is fair, just, and appropriate. *See Baier*, 60 M.J. at 384.

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).

² This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



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