

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic TYSON A. GIRARD
United States Air Force**

ACM 36126

19 June 2006

Sentence adjudged 29 September 2004 by GCM convened at Sheppard Air Force Base, Texas. Military Judge: Barbara E. Shestko.

Approved sentence: Bad-conduct discharge, confinement for 45 months, and forfeiture of all pay and allowances.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Sandra K. Whittington.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Jin-Hwa L. Frazier.

Before

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

PER CURIAM:

Officer members sitting as a general court-martial convicted appellant, contrary to his pleas, of rape, in violation of Article 120, UCMJ, 10 U.S.C. § 920. Those same members found him not guilty of obstruction of justice, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The members sentenced the appellant to a bad-conduct discharge, confinement for 45 months, and forfeiture of all pay and allowances. The convening authority approved the findings and sentence as adjudged. The appellant now contends that confinement for 45 months is inappropriately severe.

“Article 66(c), UCMJ, [10 U.S.C. § 866(c)], requires this Court to approve only that sentence, or such part or amount of the sentence, as it finds correct in law and fact and determines should be approved.” *United States v. Amador*, 61 M.J. 619, 626 (A.F. Ct. Crim. App. 2005), *pet. denied*, 2006 CAAF LEXIS 282 (C.A.A.F. 9 Mar 2006). “The

determination of sentence appropriateness ‘involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves.’” *Id.* at 626 (quoting *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988)).

Sentence appropriateness is judged by individualized consideration of the particular appellant on the basis of the nature and seriousness of the offense, the appellant’s record of service, the character of the offender, and all matters contained in the record of trial. *Id.* at 626 (citing *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

We have given individualized consideration to this particular appellant and carefully reviewed all the facts and circumstances of this case. We do not find the appellant’s sentence inappropriately severe. We are convinced the sentence is appropriate.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

THOMAS T. CRADDOCK, SSgt, USAF
Court Administrator