

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman DAVID A. GONZALES
United States Air Force

ACM S31410

16 September 2008

Sentence adjudged 05 October 2007 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: Steven J. Ehlenbeck (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 months, fine of \$6,000.00, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Matthew S. Ward.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of larceny of military property of a value greater than \$500.00, in violation of Article 121, UCMJ, 10 U.S.C. § 921. The approved sentence consists of a bad-conduct discharge, confinement for two months, a \$6,000.00 fine, and reduction to E-1.

The issues on appeal are whether the appellant is entitled to a corrected court-martial promulgating order (CMO)¹ and whether the appellant's sentence is inappropriately severe.²

Background

In 2005, the appellant became aware of unauthorized purchases being made using the Government Purchase Card (GPC) accounts in his unit. When a GPC holder changed stations, the resource advisor (RA), who was the mastermind of the scheme, made the appellant a GPC holder.

On at least ten occasions from March 2006 until October 2006, the appellant and two other individuals³ made unauthorized purchases in excess of \$26,000. These purchases included IPODs, digital recorders, video games, and car audio equipment. The appellant and others would alter the receipts by cutting and pasting to cover up their activities. The appellant personally acquired over \$11,000 worth of merchandise.

Discussion

We “may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved.” Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

After a careful review of the record of trial, to include the appellant's post-trial submissions, we conclude the appellant's sentence is not inappropriately severe. The appellant was convicted of using his position as a GPC holder to steal military property in excess of \$500. Further, he altered the receipts to cover up the unauthorized transactions. Although the appellant otherwise had a satisfactory career, including being chosen as Airman of the Quarter twice, and he cooperated with the Air Force Office of Special Investigations (AFOSI), his sentence is not inappropriately severe.

We agree that the CMO is incorrect. Preparation of a corrected CMO, properly reflecting the date sentence was announced and the correct military judge is hereby directed. See *United States v. Smith*, 30 M.J. 1022, 1028 (A.F.C.M.R. 1990).

¹ The government concedes this issue as the court-martial promulgating order failed to include the date the sentence was adjudged; further, it identified the wrong military judge. We will address this issue in our decretal paragraph.

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

³ One of the individuals was the resource advisor; however, he changed stations prior to October 2006.

Conclusion

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 approved findings and sentence are

AFFIRMED.

OFFICIAL



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