

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman First Class STEPHEN P. GOSSELIN II**  
**United States Air Force**

**ACM S30200 (f rev)**

**26 May 2006**

Sentence adjudged 31 July 2002 by SPCM convened at Spangdahlem Air Base, Germany. Military Judge: Thomas W. Pittman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 30 days, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, Major Sandra K. Whittington, Captain Diane M. Paskey, Captain Christopher S. Morgan, and Captain John S. Fredland.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Lieutenant Colonel Robert L. Marconi, Major John C. Johnson, Major Jin-Hwa L. Frazier, and Captain Nicole P. Wishart.

Before

STONE, SMITH, and MATHEWS  
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court on remand from the Court of Appeals for the Armed Forces. *United States v. Gosselin*, 62 M.J. 349 (C.A.A.F. 2006). In *United States v. Gosselin*, 60 M.J. 768 (A.F. Ct. Crim. App. 2004), we affirmed the findings and sentence. On appeal, our superior court set aside the finding as to Specification 4 of the Charge and the sentence, but affirmed the case in all other respects. They returned the case to us with instructions that we could either dismiss Specification 4 of the Charge and reassess the sentence, or order a rehearing. Under the facts and circumstances of this case, we

conclude the appropriate remedy is to dismiss Specification 4 of the Charge. We further conclude we can reassess the sentence in accordance with established criteria. *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002); *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986).

After careful consideration of the entire record, we are satisfied that, in the absence of Specification 4 of the Charge, the military judge would have adjudged a sentence of no less than a bad-conduct discharge, confinement for 30 days, and reduction to E-1. In reaching this conclusion, we note the bulk of the appellant's drug involvement is covered in the remaining specifications. He admitted during the guilty plea inquiry to using marijuana six times, distributing marijuana once, and using hallucinogenic mushrooms twice during the charged time periods. Given this case was tried by special court-martial, the absence of Specification 4 has no effect on the maximum punishment. We also find this reassessed sentence appropriate for the offenses involved. Article 66(c), UCMJ, 10 U.S.C. § 866(c).

Specification 4 of the Charge is dismissed. The findings, as amended, and the sentence, as reassessed, 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, as amended, and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator