

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

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**UNITED STATES**

**v.**

**Captain LINDA GRAHAM  
United States Air Force**

**ACM 37403**

**05 October 2010**

Sentence adjudged 15 January 2009 by GCM convened at Tyndall Air Force Base, Florida. Military Judge: Le T. Zimmerman.

Approved sentence: Dismissal and confinement for 2 months.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Jennifer J. Raab, and Major Tiwana L. Wright.

Appellate Counsel for the United States: Colonel Don M. Christensen, Lieutenant Colonel Jeremy S. Weber, Major Kimani R. Eason, and Gerald R. Bruce, Esquire.

Before

**BRAND, GREGORY, and ROAN**  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

Pursuant to her pleas, a military judge convicted the appellant of two specifications of wrongfully using methamphetamine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.<sup>1</sup> The adjudged and approved sentence consists of a dismissal and two months of confinement. On appeal, the appellant asks this Court to set aside the dismissal or to provide other meaningful sentence relief. As the basis for her request, she contends that, in light of her character, her lengthy service, and the circumstances

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<sup>1</sup> In accordance with her pleas, a general court-martial composed of officer members acquitted the appellant of wrongfully and dishonorably attempting to evade her duty to report for drug testing and making a false official statement in violation of Article 133, 10 U.S.C. § 933, and Article 107, 10 U.S.C. § 907, respectively.

surrounding the offenses, her sentence is inappropriately severe.<sup>2</sup> After a careful review of the record of trial, to include the appellant's post-trial submissions, we disagree.

### *Background*

In March 2007, the appellant was offered and used methamphetamine while attending an off-base party. She consumed two pills that evening and stated that the drug kept her very alert for 24-30 hours. At the same party, the appellant purchased two additional pills which she kept but did not consume at that time. Two days later, the appellant provided a urinalysis sample, which tested positive for methamphetamine. In March 2008, the appellant consumed the remaining pills. The appellant did not have a lawful reason to ingest methamphetamine on either occasion. In mitigation, the appellant states that she was in considerable physical pain in both 2007 and 2008 as a result of recent neck surgery and she used the drug in order to alleviate her discomfort. She also cites other difficult familial problems as contributing factors in her decision to use methamphetamine. At the time of her court-martial, the appellant had served 19 years and 1 month of active duty service.

### *Sentence Appropriateness*

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of the offense, 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), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007).

Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we 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 task of granting clemency, which “involves bestowing mercy—treating an accused with less rigor than [s]he deserves,” is assigned to the convening authority and other officials. *Healy*, 26 M.J. at 395-96.

The appellant argues that her sentence is too severe, emphasizing her admittedly excellent record of service and her status as a major monetary source of support for her entire family, including a sister who was in a serious car accident, her brother who was incarcerated, and her father, an Air Force veteran who suffers from cancer and has undergone multiple surgeries. The appellant provided an oral and written unsworn statement, apologizing and accepting full responsibility for her actions. She explained that she resorted to using the drug in part because she “did not want to add to anybody else's burden” by discussing her physical and emotional pain.

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

In the case sub judice, the appellant clearly violated the standards expected of an officer. Despite fully understanding the illegality of her act, she nonetheless chose to consume methamphetamine in 2007 and then did so again a year later. Notwithstanding her personal difficulties, the appellant's argument on appeal is essentially a request for clemency. Having given individualized consideration to this particular appellant, the nature of the offense, the appellant's record of service, and all matters in the record of trial, we hold that the approved sentence is not inappropriately severe.

*Conclusion*

The approved findings and sentence are correct in law and fact and no error prejudicial to the substantial rights of the appellant occurred.<sup>3</sup> Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a horizontal line.

STEVEN LUCAS  
Clerk of the Court

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<sup>3</sup> The Court notes that the court-martial order (CMO), dated 31 March 2009, fails to list the appellant's plea and finding to the Specification of Charge II. We order the promulgation of a corrected CMO.