

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Technical Sergeant DAVID S. HAIL
United States Air Force**

ACM 36283 (f rev)

13 June 2007

Sentence adjudged 16 February 2005 by GCM convened at Aviano Air Base, Italy. Military Judges: William M. Burd and Adam Oler.

Approved sentence: Dishonorable Discharge, confinement for 48 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Captain Daniel J. Breen, and Captain Jefferson E. McBride.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

This case is before our Court for the second time. The appellant originally asserted two errors: (1) that he received ineffective assistance of counsel; and (2) that his sentence is inappropriately severe. We found the trial defense counsel was ineffective in his post-trial representation, and returned the case to The Judge Advocate General for remand to the convening authority to withdraw the action and for new post-trial processing. *United States v. Hail*, ACM 36283 (A.F. Ct. Crim. App. 17 Nov 2006) (unpub. op.). New post-trial processing was accomplished and on 8 March 2007, the convening authority completed a new action. This case is before this Court for further review with no additional assignments of error. We now turn to the remaining assignment of error, sentence appropriateness.

Discussion

This Court may affirm only such findings and sentence as we find correct in law and in fact, and determine, on the basis of the entire record, should be approved. Article 66(c), UCMJ, 10 U.S.C. § 866(c). When considering sentence appropriateness, we should give "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

In conducting our review we must keep in mind that Article 66(c), UCMJ, has a sentence appropriateness provision that is "a sweeping Congressional mandate to ensure 'a fair and just punishment for every accused.'" *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (citing *United States v. Bauerbach*, 55 M.J. 501, 506 (A.C.C.A.2001)). Article 66(c), UCMJ, "requires that [we] independently determine, in every case within [our] limited Article 66, UCMJ, jurisdiction, the sentence appropriateness of each case [we] affirm." *Baier*, 60 M.J. at 384-85.

We may also take into account disparities between sentences for similar offenses. Our duty to assess the appropriateness of a sentence is "highly discretionary," but does not authorize us to engage in an exercise 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).

After carefully examining the submissions of counsel and taking into account all the facts and circumstances, we do not find the appellant's sentence inappropriately severe. *See Snelling*, 14 M.J. at 268-69. To the contrary, after reviewing the entire record, we find the sentence is appropriate for this offender and his offenses. *See Baier*, 60 M.J. at 383-84; *Healy*, 26 M.J. at 395.

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

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator