

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JUSTIN D. HALL
United States Air Force

ACM 36981

10 October 2008

Sentence adjudged 14 February 2007 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Jennifer A. Whittier (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 165 days, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Vicki A. Belleau.

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

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Contrary to his plea, a military judge convicted the appellant of wrongful divers uses of cocaine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged and approved sentence consists of a bad-conduct discharge, confinement for 165 days, and reduction to E-1. The appellant asserts that when we consider the particular facts of his drug use, his military service, his cocaine addiction, and the efforts he made to be a good worker, the bad-conduct discharge is inappropriately severe. We find to the contrary.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United*

States v. Snelling, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007).

The appellant admitted that he repeatedly used cocaine over the six-week period alleged. Included in this admission is the use of at least 24 rocks of crack cocaine. He smoked 16 rocks of crack cocaine between 30 June 2006 and 01 July 2006 alone. He further admitted that his usage resulted in him becoming a cocaine addict. Clearly, a punitive discharge is appropriate.

Post-Trial Delay

In this case, the overall delay of 546 days between the trial and completion of review by this Court is facially unreasonable. Because the delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice. *United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). When we assume error, but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case.

Having considered the totality of the circumstances and entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt and that no relief is warranted.

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, 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.

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