UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman BRANDON C. HARRIS
United States Air Force

ACM S31650

22 January 2010

Sentence adjudged 19 February 2009 by SPCM convened at Francis E. Warren Air Force Base, Wyoming. Military Judge: David S. Castro (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 months, forfeiture of $500.00 pay for two months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, and Gerald R. Bruce, Esquire.

Before

BRAND, JACKSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

Contrary to his pleas, a military judge sitting as a special court-martial found the appellant guilty of one specification of larceny of non-military property, in violation of Article 121, UCMJ, 10 U.S.C. § 921. The military judge sentenced the appellant to a bad-conduct discharge, two months of confinement, forfeiture of "$500 . . . pay for two months," and reduction to E-1. The convening authority approved the sentence as adjudged. The appellant asks this Court to disapprove the bad-conduct discharge and reassess his sentence or grant other meaningful relief. As the basis for his request, he opines that, in light of his crime, character, lack of prior criminal history, and apology,

his sentence is overly severe.[*] We disagree. However, because we find error in the announcement of the sentence, we affirm the findings and modify the sentence.

Background

In late May 2008, Senior Airman (SrA) CF deployed to Kuwait. During his deployment, SrA CF left his X-Box gaming system, hereinafter X-Box, in his on-base dormitory room. While SrA CF was deployed, he discovered that someone was using his X-Box to play games on-line. In early summer 2008, a fellow airman gave Airman First Class (A1C) JB the X-Box that belonged to SrA CF. A1C JB placed the X-Box in the dormitory day room and instructed the other residents that they could use the X-Box but should not remove it from the dormitory day room.

Upon SrA CF's return, he discovered his X-Box was missing and reported the alleged theft to the dormitory manager. A review of the dormitory's surveillance tapes revealed that during the early morning hours of 18 September 2008, the appellant, dressed in his battle dress uniform, and a fellow security forces' member, dressed in his airman battle uniform, were performing security checks in SrA CF's dormitory when they discovered the X-Box in the dormitory day room. The appellant asked his fellow patrolman if they should safeguard the X-Box and was advised to take no action. The surveillance system also revealed that on that same day, an individual dressed in a black shirt and battle dress pants entered the dormitory day room and took the X-Box.

On 22 October 2008, investigators from the Security Forces Office of Investigation summoned the appellant to their office for an interview. After a proper rights advisement, the appellant waived his rights, agreed to answer questions, and confessed to stealing the X-Box.

Inappropriately Severe Sentence

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 his 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).

[*] This issue is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

In this case, the appellant, by his actions, seriously compromised his standing as a military member. The offense is aggravated by the fact that he stole from a fellow airman while the airman was deployed and stole from a dormitory, the residents and contents of which he was entrusted to protect. After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offense of which the appellant was found guilty, we do not find the appellant's sentence, one which includes a bad-conduct discharge, overly severe or inappropriately severe.

Erroneous Sentence Announcement

Though not raised as an issue, we note that the military judge, in announcing the forfeiture portion of the sentence, stated, "Senior Airman Brandon C. Harris this court-martial sentences you . . . *to forfeit $500 of your pay for two months* . . . ." (Emphasis added). On 27 May 2009, the convening authority approved the sentence as adjudged.

"Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeiture will last." Rule for Courts-Martial 1003(b)(2).

Because the announced amount of forfeitures did not include the words "per month," we find that the announced sentence was erroneous and that the amount announced shall be the *total amount* to be forfeited. *United States v. Johnson*, 32 C.M.R. 127, 128 (C.M.A. 1962); *United States v. Walker*, 9 M.J. 892, 892-93 (A.F.C.M.R. 1980); *see also United States v. Nimmons*, 59 M.J. 550, 550 (N.M. Ct. Crim. App. 2003); *United States v. Burkett*, 57 M.J. 618, 620-21 (C.G. Ct. Crim. App. 2002). Therefore, the appellant shall forfeit pay in the total amount of $500.

Conclusion

We affirm the findings and only so much of the sentence as provides for a bad-conduct discharge, two months of confinement, forfeiture of $500 pay for one month, and reduction to E-1. "All rights, privileges, and property of which [the a]ppellant has been deprived by virtue of execution of forfeitures approved by the convening authority which have not been affirmed will be restored." *Burkett*, 57 M.J. at 662. The approved findings and sentence, as modified, 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, as modified, are

AFFIRMED.

OFFICIAL

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