UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JEREMY L. KIMBLE
United States Air Force

ACM 37015

29 August 2008

Sentence adjudged 02 April 2007 by GCM convened at Keesler Air Force Base, Mississippi. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 75 days, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Captain Griffin S. Dunham, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Amy E. Hutchens.

Before

WISE, BRAND, and HELGET
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of attempting to introduce heroin, a Schedule I controlled substance, onto Keesler AFB, conspiring with another airman to wrongfully use heroin, distributing heroin to two other airmen, and wrongfully using heroin, in violation of Articles 80, 81, and 112a, UCMJ, 10 U.S.C. §§ 880, 881, 912a. The military judge sentenced the appellant to a dishonorable discharge, confinement for 3 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the adjudged sentence except for the confinement, which was reduced to 75 days.

The issue on appeal is whether the approved sentence is inappropriately severe. Specifically, whether a dishonorable discharge is an excessively harsh approved sentence for attempting to introduce heroin, distributing heroin, and using heroin, when: (1) the total charged time period covered only a six-day period and did not involve a significant amount of heroin; (2) no evidence existed to show any direct harm to any individual or the military mission; and (3) appellant was 20 years old and had only served in the Air Force for six months when he committed the offenses.

Background

At the time the offenses were committed, the appellant was 20 years old and had been on active duty in the Air Force for less than six months. In mid-October 2006, the appellant and two other airmen in his squadron, A1C CM and Amn CW, were having a casual conversation and at some point they discussed using heroin. The appellant informed the other two airmen that he knew where to obtain some heroin and asked if they wanted to try it. They all agreed to share the cost of the heroin, which was approximately $60-$80.

In order to obtain the heroin, the appellant called his sister, who lived in Ohio, and arranged to purchase the heroin from the appellant's sister's boyfriend, Mr. JB. The appellant wired the money and several days later received a package in the mail containing two small balloons containing heroin. After retrieving the package from the Keesler AFB post office, the appellant returned to his dorm where A1C CM and Amn CW were waiting. The appellant emptied the heroin onto a blue plate and heated it in the microwave. He then scraped the heroin into a powder and formed three lines approximately one inch in length. All three airmen then snorted the heroin. Sometime near the end of October 2006, the three airmen agreed to use heroin for a second time. They again wired money to Mr. JB in Ohio, but this time the cost was $180.*

On or about 2 November 2006, the appellant received another package in the mail, this time containing six balloons of heroin. The three airmen went to the appellant's room, wherein the appellant emptied the heroin from the balloons onto a blue plate and heated it up in the microwave. The appellant then scraped the heroin into a powder and formed three individual lines approximately one inch in length. The appellant snorted one line and then distributed the other two lines to A1C CM and Amn CW, who each snorted a line of the heroin.

On or about 8 November 2008, the appellant and Amn CW were in Amn CW's dorm room, and they agreed to purchase and use heroin again. They each agreed to contribute approximately $60-$80. After receiving the money from Amn CW, the

* None of the background information contained in the first two paragraphs formed the basis of any of the charged offenses. However, this information was included in the Stipulation of Fact, Prosecution Exhibit 1.

appellant called his sister in Ohio and wired the money to Mr. JB. The plan was the same as the two previous occasions where the heroin would be sent to the appellant's on-base post office box through the U.S. mail and the appellant would then distribute some of the heroin to Amn CW and they would use the heroin together again in the appellant's dorm room. However, the heroin never arrived as the appellant's sister claimed the money had been stolen from her purse.

Sentence is Inappropriately Severe

The issue is whether the appellant's sentence is inappropriately severe. This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine, on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the 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). We have a great deal of discretion in determining whether a particular sentence is appropriate, but 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 maximum possible punishment in this case was a dishonorable discharge, confinement for 40 years, forfeiture of all pay and allowances, and reduction to E-1. The appellant's approved sentence was a dishonorable discharge, confinement for 75 days, forfeiture of all pay and allowances, and reduction to E-1. We have given individualized consideration to this particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all other matters contained in the record of trial. Although the appellant was just 20 years old when he committed the offenses and the charged time period occurred only over a six-day period, the attempted wrongful introduction of heroin onto a military installation, conspiracy to wrongfully use heroin, distributing heroin to two other airmen in a dorm room, and the wrongful use of heroin, are very serious offenses. Approving the dishonorable discharge was clearly within the discretion of the convening authority and was appropriate in this case. Accordingly, 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. 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

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