UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class TY A. KINCAID
United States Air Force

ACM 35681

30 June 2005

Sentence adjudged 15 July 2003 by GCM convened at Eielson Air Force Base, Alaska. Military Judge: Timothy D. Wilson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 13 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Gilbert J. Andia, Jr. and Major Andrea M. Gormel.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, Lieutenant Colonel Michael E. Savage, and Major Kevin P. Stiens.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant asserts his sentence is inappropriately severe.1 Finding no error, we affirm.

Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires that we affirm only so much of the sentence as we find "should be approved." In determining sentence appropriateness, we must exercise our judicial powers to assure that justice is done and that the appellant receives the punishment he or she deserves. Performing this function does not authorize this Court to exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A.

1 This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

1988). The primary manner in which we discharge this responsibility is to give "individualized consideration" to an appellant, including the nature and seriousness of the offenses, and the character of the appellant's service. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180 (C.M.A. 1959)).

The appellant alleges that the sentence he received was unduly harsh for what he characterizes as "an extremely bad decision." The record shows that appellant made not one bad decision, but literally dozens of them, using marijuana 35 times and cocaine on two additional occasions. We considered his cooperation with the Air Force Office of Special Investigations (AFOSI) agents once his drug use was uncovered, but considered as well, the fact that he continued to use illegal drugs even while working with the AFOSI. Taking into account all matters in aggravation, extenuation, and mitigation, and applying the legal standard stated above to the facts of this case, we find the appellant's sentence is not inappropriately severe.

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 findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court