UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman ZACHARY F. LORENZ
United States Air Force

ACM 35902

14 December 2005

Sentence adjudged 17 February 2004 by GCM convened at Hurlburt Field, Florida. Military Judge: Lance Sigmon.

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

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Sandra K. Whittington, and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Major John C. Johnson, and Major Jin-Hwa L. Frazier.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

The appellant was tried at Hurlburt Field, Florida, by a general court-martial of officer and enlisted members. He was convicted, in accordance with his pleas, of a single specification of wrongful use of cocaine on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The convening authority approved the adjudged sentence of a bad-conduct discharge, forfeiture of $500.00 pay for 1 month, and reduction to E-1.

The appellant contends the assistant trial counsel's sentencing argument was improper, in that he urged the panel to place a "special label" and a "permanent label" on the appellant's service "by labeling that service as bad conduct" with a bad-conduct discharge because "many people have served in the armed services honorably and well without ever committing a crime."

The trial defense counsel did not object to the assistant trial counsel's argument, therefore we review for plain error. *See United States v. Barrazamartinez*, 58 M.J. 173, 175 (C.A.A.F. 2003); *United States v. Powell*, 49 M.J. 460, 464 (C.A.A.F. 1998). After examining the argument in the context of the entire court-martial,[1] and particularly in the context of the assistant trial counsel's argument as a whole, we do not find his argument to have been improper. This is not a case where the government counsel's sentencing argument improperly blurred the distinction between a punitive discharge and administrative separation from the service. *See United States v. Motsinger*, 34 M.J. 255, 257 (C.M.A. 1992). He did not assert that failure to adjudge a bad-conduct discharge would result in retention or an honorable discharge, nor did he imply that "bad conduct" is a simple label of service without acknowledging the punitive nature of the discharge. Instead, the assistant trial counsel repeatedly characterized the government's recommended sentence of a bad-conduct discharge, confinement for one year, and reduction to E-1 as punishment for the appellant's crimes.

Further, punitive discharges do characterize a member's service. *See, e.g.*, *United States v. Britt*, 48 M.J. 233, 234 (C.A.A.F. 1998). The assistant trial counsel's argument was consistent with the military judge's instruction to the members that "[a] punitive discharge will place limitations on employment opportunities and will deny the accused other advantages which are enjoyed by one whose discharge characterization indicates that he has served honorably." The challenged argument was fair comment, and we find no error.

Even if we assumed there was error in the assistant trial counsel's argument, we find no material prejudice to the substantial rights of the appellant. Article 59(a), UCMJ, 10 U.S.C. § 859(a). We reach that conclusion considering, in part, the lack of objection by the trial defense counsel and his counter argument to the members on the subject of a punitive discharge, the serious nature of the offenses, and the standard instructions given by the military judge with respect to the consequences of a punitive discharge.

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.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

[1] *See United States v. Baer*, 53 M.J. 235, 238 (C.A.A.F. 2000).