

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman DAVID J. MAAS
United States Air Force

ACM 37109

04 September 2008

Sentence adjudged 31 July 2007 by GCM convened at Altus Air Force Base, Oklahoma. Military Judge: Bryan D. Watson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Lance J. Wood.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Megan E. Middleton.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

HEIMANN, Senior Judge:

Consistent with his plea the appellant was convicted of one specification of wrongful use of prescription Adderall on divers occasions and three separate specifications of wrongful distribution of Adderall, Alprazolam and Zolpidem, all in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.¹ The adjudged sentence consisted of a bad-conduct discharge, confinement for 6 months, and reduction to E- 1. Consistent

¹ Adderall is a schedule II controlled substance. Alprazolam and Zolpidem are schedule IV controlled substances.

with a pretrial agreement, the convening authority approved only the discharge, reduction, and four months of confinement.

The appellant raises one issue on appeal. He claims the sentence of six months in confinement and a bad-conduct discharge is excessively harsh for wrongfully distributing and using prescription drugs when the appellant lawfully had a prescription for the drugs.²

Sentence Appropriateness

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005); *United States v. Christian*, 63 M.J. 714, 717 (A.F. Ct. Crim. App. 2006). 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. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006). 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); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004).

The appellant was 27 years old and a model airman. His rapid promotion to both Senior Airman and Staff Sergeant clearly indicate he had great potential. Unfortunately, he also committed crimes that warrant the punishment he received, even when his entire record, to include 140 days of hazardous duty in Iraq, is considered. In our view, appellant's decision to snort prescription Adderall in the presence of a 17-year-old minor and then provide an equal share of the drug to the minor for his illegal use, in the same manner, was a serious offense. These crimes, combined with unlawfully mailing Alprazolam and Zolpidem to his wife for her use, warrant both the bad-conduct discharge and the confinement. Finally, we considered the appellant's current medical problems, but are not persuaded that they render the sentence inappropriate, especially given the fact that the appellant abused the very drugs he was prescribed to treat these conditions.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.

² While not raised by defense, we expressly conclude that appellant's snorting of his prescription, Adderall, was wrongful and that the military judge's guilty plea inquiry adequately addressed any potential defenses. See *United States v. Pariso*, 65 M.J. 722, 724 (A.F. Ct. Crim. App. 2007).

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



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