

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class ROBERT B. MALONE
United States Air Force**

ACM S30118 (f rev)

30 September 2004

Sentence adjudged 5 April 2002 by SPCM convened at Keesler Air Force Base, Mississippi. Military Judge: Mary M. Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, forfeiture of \$500.00 pay per month for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Carlos L. McDade, Major Terry L. McElyea, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major M. Leeann Summer.

Before

STONE, GENT, and SMITH
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before us upon further review after this Court remanded the case to the convening authority for a new post-trial recommendation and action. *United States v. Malone*, ACM S30118 (A.F. Ct. Crim. App. 16 Apr 2004) (unpub. op.). The appellant alleges, pursuant to *United States v. Grostefon*, 12 M.J. 431, 436 (C.M.A. 1982), that his sentence is inappropriately severe. This Court may only affirm those findings and sentences we find are 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). In determining sentence appropriateness, we must exercise our judicial powers to assure that justice is done and that the accused receives the punishment he deserves. Performing this function

does not authorize this Court to grant clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this responsibility is to give “individualized consideration” to an appellant on the “basis of the nature and seriousness of the offense and the character of the [appellant].” *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). Applying this standard, we find that the appellant’s sentence is not inappropriately severe. Having carefully considered this issue, we find it is without merit.

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

ANGELA M. BRICE
Clerk of Court