

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Airman First Class BUFORD R. MCDONALD, JR.**  
**United States Air Force**

**ACM S31427**

**18 November 2008**

Sentence adjudged 28 November 2007 by SPCM convened at Sheppard Air Force Base, Texas. Military Judge: Grant L. Kratz.

Approved sentence: Bad-conduct discharge, confinement for 60 days, forfeiture of \$867.00 pay per month for 2 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Michael A. Burnat.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Naomi N. Porterfield.

Before

BRAND, FRANCIS, and JACKSON  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Pursuant to the appellant's pleas, a military judge convicted him of one specification of wrongful divers use of marijuana, one specification of wrongful divers use of cocaine, and one specification of wrongful divers use of dextromethorphan, in violation of Articles 112a and 134, UCMJ, 10 U.S.C. §§ 912a, 934. A panel of officers sitting as a special court-martial sentenced the appellant to a bad-conduct discharge, 60 days confinement, forfeitures of \$867 a month for two months, and a reduction to E-1. The convening authority approved the findings and the sentence.<sup>1</sup> On appeal the

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<sup>1</sup> The appellant and the convening authority signed a pretrial agreement wherein the appellant agreed to plead guilty in return for the convening authority's promise not to approve confinement in excess of four months.

appellant asks this Court to disapprove his bad-conduct discharge or, in the alternative, grant other appropriate relief. The basis for this request is that he opines his sentence to a bad-conduct discharge is inappropriately severe.<sup>2</sup> Finding no error, we affirm.

### *Background*

On two occasions between 1 July 2007 and 31 August 2007, the appellant smoked marijuana. On the first occasion, he smoked marijuana with fellow airmen in a Sheppard Air Force Base (AFB) dormitory room. On the second occasion, he purchased the marijuana from a fellow airman and smoked it at a local, off-base car wash. During the same time period, the appellant snorted cocaine on two occasions. On the first occasion, he purchased it from a fellow airman and snorted it with another airman in a Sheppard AFB dormitory room. On the second occasion, he and another airman persuaded yet a third airman to purchase the cocaine, and the three snorted the cocaine in a dormitory room.

Finally, on four occasions during approximately the same time period, the appellant purchased dextromethorphan from the Sheppard AFB Exchange and consumed excessive amounts of the drug in an attempt to become intoxicated. On 15 August 2007, the Air Force Office of Special Investigations received word of the appellant's drug use and summoned the appellant to their offices for an interview. After a rights advisement, the appellant waived his rights and confessed to his crimes.

### *Inappropriately Severe Sentence*

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offense, 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), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we 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).

In the case at hand, use of illegal drugs is a serious offense which compromises the appellant's standing as a military member. Moreover, the appellant's military record is less than satisfactory – he received a letter of reprimand for being disrespectful to a non-commissioned officer, a letter of counseling for violating phase rules, and has been rated by his commander as an unsatisfactory duty performer. In short, after carefully examining the submissions of counsel, the appellant's military record, and taking into

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<sup>2</sup> This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

account all the facts and circumstances surrounding the offenses of which he was found guilty, we do not find the appellant's sentence inappropriately severe.

*Erroneous Promulgating Order*

We note that the promulgating order fails to correctly state the appellant's full name, Airman First Class Buford R. McDonald, Jr. Additionally, all three specifications of the charges fail to state "on divers occasions," as they were charged on the charge sheet. Preparation of a corrected court-martial order is hereby directed. *See United States v. Smith*, 30 M.J. 1022, 1028 (A.F.C.M.R. 1990).

*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



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