

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JESSICA E. MCFADDEN
United States Air Force**

ACM 37438

15 March 2012

Sentence adjudged 21 February 2009 by GCM convened at Lackland Air Force Base, Texas. Military Judge: William M. Burd.

Approved sentence: Bad-conduct discharge, confinement for 24 months, forfeiture of all pay and allowances, fine of \$1,650.00, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Maria A. Fried; Major Shannon A. Bennett; and Major Jennifer J. Raab.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Jeremy S. Weber; Major Coretta E. Gray; Captain Erika L. Sleger; and Gerald R. Bruce, Esquire.

Before

ORR, ROAN, and HARNEY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

We have examined the record of trial, the assignment of errors, including the three submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and the Government's reply thereto. Considering the evidence in the light most favorable to the prosecution, we find that a reasonable factfinder could have found, beyond a reasonable doubt, all essential elements of the offenses of conspiracy to commit the offense of desertion, desertion, absence without leave, and of making a false official statement, under Articles 81, 85, 86, and 107, UCMJ, 10 U.S.C. §§ 881, 885, 886, 907, respectively. *United States v. Walters*, 58 M.J. 391, 395 (C.A.A.F. 2003); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). *See also United States v. Barnes*, 38 M.J. 72 (C.M.A.

1993). Furthermore, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are convinced of the appellant's guilt beyond a reasonable doubt. *Walters*, 58 M.J. at 395; *Turner*, 25 M.J. at 325. See also *United States v. Matias*, 25 M.J. 356, 362 (C.M.A. 1987). We also find the military judge did not abuse his discretion by admitting evidence of uncharged misconduct during sentencing, or by his denial of the appellant's motions to suppress statements and declare a mistrial. *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004) (citing *United States v. Monroe*, 52 M.J. 326, 330 (C.A.A.F. 2000)). Moreover, after conducting individualized consideration of the appellant's character, the nature and seriousness of her offenses, and the entire record of trial, we find that the appellant's sentence is not inappropriately severe. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). See also *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999).

Post-trial Delay

The overall delay of more than 540 days between the time the case was docketed at the Air Force Court of Criminal Appeals and completion of review by this Court is facially unreasonable. Because the delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay, (2) the reasons for the delay, (3) the appellant's assertion of the right to timely review and appeal, and (4) prejudice. *United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). When we assume error, but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case. Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt.*

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).

* We note this Court approved seven separate requests from the appellant for enlargements of time in this case prior to the appellant's assertion of a violation of the 18-month post-trial processing standard for appellate review.

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a horizontal dotted line.

STEVEN LUCAS
Clerk of the Court