

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman First Class JEREMY S. MCMANUS  
United States Air Force**

**ACM S32126**

**22 November 2013**

Sentence adjudged 3 January 2013 by SPCM convened at Shaw Air Force Base, South Carolina. Military Judge: Michael J. Coco.

Approved Sentence: Bad-conduct discharge, confinement for 2 months, forfeiture of \$1,010.00 pay per month for 2 months, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Nicholas D. Carter.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Terence S. Dougherty; and Gerald R. Bruce, Esquire.

Before

ORR, HARNEY, and MITCHELL  
Appellate Military Judges

**OPINION OF THE COURT**

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

The appellant was convicted consistent with his pleas at a special court-martial comprised of officer members of one specification of failing to obey an order; one specification of wrongful introduction of marijuana onto an installation; one specification of wrongful use of marijuana; one specification of adultery; and one specification of wrongful consumption of prescription medication, in violation of Articles 92, 112a, and 134, UCMJ, 10 U.S.C. §§ 892, 912a, 934. The members sentenced the appellant to a bad-conduct discharge, confinement for 2 months, forfeiture of \$1,010 pay per month for

2 months, and reduction to E-1. The convening authority approved the sentence as adjudged.

On appeal, the appellant asserts that his sentence, which includes a bad-conduct discharge, is too severe in light of the nature of the offenses, his young age, and his lack of prior discipline.<sup>1</sup> The appellant argues that similar offenses are typically handled through the nonjudicial punishment process under Article 15, UCMJ, 10 U.S.C. § 815. We disagree and affirm.

### *Background*

During his *Care*<sup>2</sup> inquiry, the appellant stated he transported three grams of marijuana onto Shaw Air Force Base, South Carolina, twice during the charged timeframe, and smoked the marijuana about eight times in base housing with Mrs. SG using a homemade bong. Mrs. SG was married to a fellow airman during this time. The appellant admitted that Mrs. SG had given him Flexeril to help with his leg pain, and that he ingested the drug without having a current prescription. Finally, the appellant admitted that he had sexual intercourse with Mrs. SG on multiple occasions and had continued his relationship with her despite being ordered by his first sergeant to stop.

### *Sentence Appropriateness*

This Court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). We “may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] 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). “We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offenses, the appellant’s record of service, and all matters contained in the record of trial.” *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); *see also United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Although we are accorded great discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Nerad*, 69 M.J. 138, 148 (C.A.A.F. 2010); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

We have given individualized consideration to this appellant on the nature and seriousness of the offenses, the appellant’s record of service, and all matters contained in the record of trial. The appellant had been in the Air Force for just over two years at the time of his court-martial, and had received one enlisted performance report. During this short period of military service the appellant knowingly violated the UCMJ multiple

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<sup>1</sup> This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

<sup>2</sup> *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

times, which show a lack of ability to conform to the expected military standards of conduct. He introduced and then used marijuana on base several times. He wrongfully obtained and used a prescription drug for which he did not have a prescription. He had sexual intercourse with Mrs. SG, the wife of a fellow airman, in his dorm room and in her base housing while her husband was deployed. We find that the approved sentence was clearly within the discretion of the convening authority, was appropriate in this case, and was not inappropriately severe.

### *Conclusion*

The approved findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.



FOR THE COURT

A handwritten signature in cursive script, appearing to read "L M C", is written over the printed name.

LEAH M. CALAHAN

Deputy Clerk of the Court