UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JOSEPH D. MINNICK
United States Air Force

ACM 37653

17 December 2010

Sentence adjudged 09 March 2010 by GCM convened at McConnell Air Force Base, Kansas. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 25 years, and reduction to E-1.

Appellate Counsel for the Appellant: Major Darrin K. Johns.

Appellate Counsel for the United States: Major Naomi N. Porterfield and Gerald R. Bruce, Esquire.

Before

BRAND, GREGORY, and ROAN
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

GREGORY, Senior Judge:

A general court-martial composed of a military judge sitting alone convicted the appellant in accordance with his pleas of two specifications of aggravated sexual abuse of a child, one specification of aggravated sexual contact, two specifications of indecent liberties, and sodomy of a child in violation of Articles 120 and 125, UCMJ, 10 U.S.C. §§ 920, 925.[1] The court-martial sentenced him to a dishonorable discharge, confinement for

[1] In accordance with a pretrial agreement, two specifications of child rape were dismissed and the appellant was permitted to plead by exceptions to one act instead of divers occasions as alleged in Charge I, Specification 7 (indecent liberties), and Charge II (sodomy).

25 years, forfeiture of all pay and allowances, and reduction to the grade of E-1. A pretrial agreement capped confinement at 40 years and required that the convening authority waive automatic forfeitures for the benefit of the victim. The convening authority approved the sentence adjudged except for the forfeitures and, in compliance with the pretrial agreement, waived the automatic forfeitures for the benefit of the victim. The appellant now argues that his sentence is inappropriately severe.

Background

At the time of the offenses the appellant was a 24-year-old airman who resided in military family housing with his wife and seven-year-old stepdaughter, MS. The appellant admitted during the plea inquiry that on multiple occasions between 1 January and 27 April 2009, he sexually abused MS while his wife was out. He would rub lotion on her genitalia and have her rub lotion on his penis until he ejaculated on her hand. On one occasion he positioned her so that he could ejaculate into her mouth. He also inserted his finger into her anus on multiple occasions, and once penetrated her anus with his penis. Much of the sexual misconduct occurred during or after the appellant watched pornography with MS. The appellant explained to the military judge that having her watch pornography with him caused him to become more aroused.

Inappropriately Severe Sentence

We review sentence appropriateness de novo. *See 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 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). 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).

For his crimes the appellant faced a maximum sentence of life without the possibility of parole, but a pretrial agreement capped his exposure to confinement at 40 years and the court-martial sentenced him to 25 years. He asserts on appeal that this sentence is too severe, but does not specify what he considers appropriate. Having considered the sentence de novo in light of the character of this offender, the nature and seriousness of his offenses, and the entire record of trial, we find the appellant's sentence entirely appropriate.

In support of his argument, he highlights that he turned himself in and "admitted his crimes when he was not even suspected of any wrong-doing." He neglects to mention that his confession to law enforcement only occurred after the appellant's victim told her mother, who then confronted the appellant in a recorded telephone call. Further, in his

confession to law enforcement the appellant attempts to rationalize his depraved behavior by stating that he was unhappy in his marriage, felt abandoned, and that his seven-year-old victim "asked for it." Such a "confession" does not lead us to conclude that the approved sentence is inappropriate.

Without specifically arguing it, the appellant appears to invite sentence comparison by referencing the sentences in other select cases that involve various crimes of child sexual abuse. We decline the appellant's implied invitation to engage in sentence comparison. "At [this Court], an appellant bears the burden of demonstrating that any cited cases are 'closely related' to his or her case and that the sentences are 'highly disparate.'" *Lacy*, 50 M.J. at 288. Closely related cases include those which pertain to "coactors involved in a common crime, servicemembers involved in a common or parallel scheme, or some other direct nexus between the servicemembers whose sentences are sought to be compared." *Id.* The appellant falls far short of his burden to show that the facts behind the cases cited in his brief make them closely related to his own, and he is therefore not entitled to a sentence comparison.

Conclusion

The approved findings and the 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 findings and the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court