

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Captain MOHAMED M. MOHAMED
United States Air Force

ACM 36421 (f rev)

30 January 2009

Sentence adjudged 13 December 2004 by GCM convened at Brooks City-Base, Texas. Military Judge: Barbara Shestko.

Approved sentence: Dismissal and confinement for 8 years.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, Major John N. Page, and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Matthew S. Ward, Major Martin J. Hindel, and Captain Ryan N. Hoback.

Before

WISE, FRANCIS, and HEIMANN
Appellate Military Judges

UPON FURTHER REVIEW

This opinion is subject to editorial correction before final release.

PER CURIAM:

This case is before our Court on remand from the Court of Appeals for the Armed Forces (CAAF). *United States v. Mohamed*, No. 08-0720/AF (C.A.A.F. 9 Dec 2008).^{*} In *United States v. Mohamed*, ACM 36421 (A.F. Ct. Crim. App. 20 May 2008) (unpub. op.), we modified the trial court's findings, by not affirming a finding of guilty to one of 18 specifications, and reassessed the sentence. In announcing our reassessed sentence,

^{*} The appellate counsel declined the opportunity to file a brief before this Court on the issue related to the remand.

which included a three month reduction in confinement, we inadvertently failed to clearly reflect this Court's conclusions regarding the dismissal portion of the sentence.

The appellant petitioned our superior court arguing that the approved sentence did not include the dismissal in view of the lack of any comment on the dismissal in the reassessment portion of the opinion. On appeal, CAAF affirmed our decision as to the approved findings, as modified, but set aside our decision as to the sentence. They returned the case to us with instructions for clarification as to the affirmed sentence. *United States v. Kosek*, 41 M.J. 60, 64 (C.M.A. 1994).

As previously concluded and consistent with our prior intent, we again conclude we can reassess the sentence in accordance with established criteria. A rehearing on sentence is therefore unnecessary. *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002); *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986).

The appellant was originally found guilty of 18 specifications and sentenced to a dismissal and confinement for eight years. While we do consider disobedience of orders a significant offense, the lone dismissed specification was not the most significant by some order of magnitude. It raised the maximum permissible punishment in this case by only six months. Reassessing the sentence, consistent with the criteria outlined above, consistent with our prior intent, and clarifying our prior opinion, we are convinced beyond a reasonable doubt that the panel would have awarded a sentence of at least a dismissal and confinement for seven years and nine months. Furthermore, we find the sentence, as modified, to be appropriate. See *United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990). Accordingly, the approved sentence, as reassessed, is

AFFIRMED.

OFFICIAL



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