

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic CHRISTOPHER J. MOORE II
United States Air Force

ACM 37019

21 October 2008

Sentence adjudged 19 April 2007 by GCM convened at Keesler Air Force Base, Mississippi. Military Judge: Stephen R. Woody (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 45 days.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Matthew S. Ward, Major Donna S. Rueppell, and Captain Jason M. Kellhofer.

Before

WISE, BRAND, and HELGET
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of wrongful use of heroin, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The approved sentence consists of a bad-conduct discharge and confinement for 45 days.

On appeal, the appellant avers he is entitled to additional pre-trial confinement credit for the government's non-compliance with Rule for Courts-Martial (R.C.M.) 305 and that his sentence to a bad-conduct discharge is inappropriately severe. Disagreeing with the appellant, we affirm.

Background

The appellant used heroin with two other active duty airmen in an on-base dormitory room on 2 November 2006. Sometime after he confessed to his use of heroin, the appellant received an Article 15, UCMJ, 10 U.S.C. § 815, for subsequent wrongful use of marijuana. In his response to the Article 15, UCMJ, action, the appellant denied knowingly using marijuana.

The appellant had been diagnosed with ulcerative colitis and was to be medically retired in December 2006.

Additional Pretrial Confinement Credit

At trial, the defense counsel successfully made a motion for credit for illegal pretrial confinement under Article 13, UCMJ, 10 U.S.C. § 813. The appellant was awarded seven days credit. Additionally, the defense counsel argued the restriction placed upon the appellant was tantamount to confinement and the appellant was entitled to credit under *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985). The military judge awarded the appellant an additional 31 days credit.

The issue on appeal is not whether the appellant is entitled to credit for restriction tantamount to confinement, but whether the appellant was entitled to credit for non-compliance with R.C.M. 305 when the military judge ruled the restriction was tantamount to confinement and awarded credit. The military judge found there was no violation of R.C.M. 305, as the restriction tantamount to confinement did not involve physical restraint as required under *United States v. Rendon*, 58 M.J. 221, 225 (C.A.A.F. 2003). Having reviewed this issue de novo* and agreeing with the military judge, we find the appellant is not entitled to additional credit under R.C.M 305.

Sentence Appropriateness

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 offense, the appellant’s record of service, and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

* See *United States v. Smith*, 56 M.J. 290, 290 (C.A.A.F. 2002); *United States v. King*, 58 M.J. 110, 113 (C.A.A.F. 2003).

The appellant wrongfully used heroin in an on-base dormitory room with two other active duty airmen. After a careful review of the record of trial, we conclude the appellant's sentence was not inappropriately severe.

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; *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