

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JOSHUA M. MOORE
United States Air Force

ACM 37138

12 September 2008

Sentence adjudged 15 November 2007 by GCM convened at Hill Air Force Base, Utah. Military Judge: Paula McCarron (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 87 days, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major David P. Bennett, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Coretta E. Gray.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, in accordance with his pleas, of one specification of divers wrongful possession of oxycodone and two specifications of forgery in violation of Articles 112a and 123, UCMJ, 10 U.S.C. §§ 912a, 923. The military judge sentenced the appellant to a bad-conduct discharge, 87 days confinement, and reduction to E-1. The convening authority, pursuant to a pretrial agreement, approved the findings and the sentence.¹ On appeal, the

¹ The appellant and the convening authority signed a pretrial agreement wherein the appellant agreed to plea guilty to one specification of divers wrongful possession of Oxycodone and two specifications of divers forgery (making and uttering false medical prescriptions) in return for the convening authority's promise to: (1) withdraw two

appellant asserts that his sentence is inappropriately severe.² The appellant accordingly asks this Court to disapprove his bad-conduct discharge. The basis for his request is that he opines his offenses were significantly mitigated by his post-deployment post-traumatic stress disorder (PTSD). Finding no error, we affirm.

Background

In March 2007, the appellant was lawfully prescribed Lorazepam for chest pain. Over the course of a one month period of time beginning on 3 May 2007, the appellant used his personal computer to create 17 false prescriptions for Oxycodone. The appellant forged the signature of the physician who had prescribed him Lorazepam, used the physician's Drug Enforcement Agency license number, and either made the Oxycodone prescription in his own name or in his wife's name. The appellant then presented the false prescriptions to 12 local pharmacies and obtained 1020 Oxycodone pills. The last pharmacy to which the appellant uttered the false prescription noticed a discrepancy with the prescription and reported the appellant to the local police. The local police, in turn, reported the appellant to the Air Force Office of Special Investigations (AFOSI). With the help of the AFOSI, the local police located the appellant and arrested him on forgery charges. The appellant waived his rights and confessed.

Sentence Appropriateness

This Court may affirm only such findings and sentence as we find correct in law and in fact, and determine, on the basis of the entire record, should be approved. Article 66(c), UCMJ, 10 U.S.C. § 866(c). When considering sentence appropriateness, we should give "individualized consideration of the particular accused on the basis of the nature and seriousness of the offense and the character of the offender." *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (internal quotations omitted).

When conducting our review we should also be mindful that Article 66(c), UCMJ, has a sentence appropriateness provision that is "a sweeping Congressional mandate to 'ensure a fair and just punishment for every accused.'" *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (quoting *United States v. Bauerbach*, 55 M.J. 501, 504 (Army Ct. Crim. App. 2001)). However, our duty in this regard is "highly discretionary" and does not authorize us to engage in an exercise 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).

additional specifications of forgery, a specification of assault with a dangerous weapon, and two specifications of carrying a concealed weapon and (2) not approve confinement in excess of that served by the appellant while in pretrial confinement.

² The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Short of the appellant's assertions himself, there is little evidence that the appellant has been diagnosed with PTSD. Moreover, assuming *arguendo* the appellant has PTSD, we do not believe his disorder significantly mitigates the offenses of which he was convicted. In committing his crimes, the appellant not only departed from the high standards expected of service members, he subjected his wife, his physician, and every pharmacist who filled the fraudulent prescriptions to potential legal liability. *See United States v. Pauling*, 60 M.J. 91, 95 (C.A.A.F. 2004). After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offenses of which the appellant was found guilty, we do not find the appellant's sentence inappropriately severe. *See Baier*, 60 M.J. at 383-84; *Healy*, 26 M.J. at 395.

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; *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