

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Captain AARON T. MOORE**  
**United States Air Force**

**ACM 37286**

**21 May 2009**

Sentence adjudged 26 Jun 2008 by GCM convened at Travis Air Force Base, California. Military Judge: Nancy J. Paul.

Approved sentence: Dismissal.

Appellate Counsel for the Appellant: Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Major Jeremy S. Weber and Gerald R. Bruce, Esquire.

Before

BRAND, FRANCIS, and JACKSON  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with the appellant's pleas, a military judge convicted him of one specification of disobedience of a superior commissioned officer on divers occasions, one specification of violating a lawful general regulation, one specification of engaging in conduct unbecoming an officer and a gentleman, one specification of adultery on divers occasions, one specification of fraternization on divers occasions, and two specifications of committing indecent acts with another, in violation of Articles 90, 92, 133, and 134, UCMJ, 10 U.S.C. §§ 890, 892, 933, 934. A panel of officers sitting as a general court-martial sentenced the appellant to a dismissal. The convening authority approved the

adjudged sentence.<sup>1</sup> On appeal the appellant asks this Court to set aside his dismissal. The basis for his request is that he opines, in light of his exemplary service, his sentence to a dismissal is excessive.<sup>2</sup> We disagree. Finding no prejudicial error, we affirm.

### *Background*

In early summer 2006, the appellant, then married, began a sexual relationship with Senior Airman (SrA) MS, a member assigned to a sister squadron. The sexual relationship continued until November 2007. On one occasion during this time period, the appellant and SrA MS were spotted having sexual intercourse against a car parked at a local apartment complex. On another occasion, the appellant and SrA MS engaged in sexual intercourse in the presence of three individuals in a San Francisco hotel room. The appellant also regularly socialized and drank alcohol with enlisted members, at least one of whom was from his unit.

In September 2007, the appellant learned that he was being investigated for his relationship with SrA MS. In an attempt to conceal the relationship, the appellant encouraged SrA MS to lie to investigators and, if called as a witness at his court-martial, to lie at trial. On 3 December 2007, the appellant's commander issued the appellant a "no contact" order prohibiting the appellant from communicating with SrA MS. Over the course of several months the appellant violated the "no contact" order by e-mailing and talking to SrA MS on the telephone.

### *Inappropriately Severe Sentence*

We review sentence appropriateness de novo. *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 offense, 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), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). 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); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App.), *aff'd in part and rev'd in part on other grounds*, 60 M.J. 368 (C.A.A.F. 2004).

In the case sub judice, the appellant, by fraternizing with SrA MS and the other enlisted members and by encouraging SrA MS to lie, has dishonored and disgraced himself as an officer. Moreover, his acts of willful disobedience, indecent acts, and

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<sup>1</sup> The appellant and the convening authority signed a pretrial agreement wherein the appellant agreed to plead guilty to the charges and specifications in return for the convening authority's promise to suspend confinement in excess of four months.

<sup>2</sup> This issue is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

adultery seriously compromise his standing as an officer and military member. After carefully examining the submissions of counsel, the appellant's otherwise exemplary 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 to a dismissal excessive or inappropriately severe.

*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, 10 U.S.C. § 866(c); *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