

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic JASON R. MOORE
United States Air Force

ACM S31672

27 October 2009

Sentence adjudged 14 May 2009 by SPCM convened at Little Rock Air Force Base, Arkansas. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 75 days.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Major Darrin K. Johns.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, Major Steven R. Kaufman, and Gerald R. Bruce, Esquire.

Before

BRAND, HELGET, and GREGORY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of one specification of absence without leave, one specification of false official statement, and one specification of wrongful appropriation, in violation of Articles 86, 107, and 121, UCMJ, 10 U.S.C. §§ 886, 907, 921. The approved sentence consists of a bad-conduct discharge and confinement for 75 days.¹

¹ The appellant was credited with 43 days for time served in pretrial confinement.

The issue on appeal, raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), is whether the appellant's sentence is inappropriately severe.

Background

On or about 1 February 2009, while working a weekend shift due to a previous nonjudicial punishment action under Article 15, UCMJ, 10 U.S.C. § 815, the appellant took a pair of night vision goggles (NVGs) from his unit. The appellant took the NVGs with the intent of returning them to his unit at a later time. He planned to use the NVGs to see the animals that lived in the wooded area behind his house on base. The appellant hid the NVGs in the back of a drawer next to his freezer. On or about 28 February 2009, the appellant's wife found the NVGs and contacted their neighbor who was a noncommissioned officer in the appellant's unit. The NVGs had a value of approximately \$12,000.

On Friday, 20 March 2009, the appellant left Little Rock AFB, Arkansas, to visit his sister in Springfield, Missouri. She was experiencing difficulties with her pregnancy. At the time, he was not allowed to be away from the local area for over 24 hours due to a pending nonjudicial punishment action for his wrongful appropriation of the NVGs. On the way to Springfield, the appellant learned that his wife, who was living in Springfield, was having an affair. On 23 March 2009, the day he was to report for duty at Little Rock AFB, the appellant went to see his wife. When he arrived at her house, he saw a man leave the house. The appellant confronted his wife, who denied the affair, then left the area and went to a friend's house. The appellant remained absent until the Greene County Sheriff's Department apprehended him on 1 April 2009.

On 23 March 2009, the appellant called his first sergeant, Master Sergeant (MSgt) PS, and left a message on MSgt PS's voicemail, informing him of his whereabouts. The appellant stated on the message, "I'm in Missouri . . . I know I'll probably get court-martialed for this . . . I can't report for work because my sister's baby just died," or words to that effect. This statement was false, as his sister had not yet given birth. Later on 23 March 2009, MSgt PS called the appellant, and the appellant reiterated his story about his sister's baby. MSgt PS stated that he would verify the information provided by the appellant and would call him back in 30 minutes. When MSgt PS called the appellant back, the appellant refused to answer his phone calls.

Inappropriately Severe Sentence

The appellant asserts that his sentence, which includes a bad-conduct discharge, is inappropriately severe. We disagree.

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). 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 offenses, the appellant’s record of service, and all matters contained in the record of trial.” *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006) (citing *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982)), *aff’d*, 65 M.J. 35 (C.A.A.F. 2007). We have a great deal of discretion in determining whether a particular sentence is appropriate but are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 287-88 (C.A.A.F. 1999); *Healy*, 26 M.J. at 395-96.

The maximum punishment in this case was the jurisdictional limit for a special court-martial, which includes a maximum of 12 months of confinement and a bad-conduct discharge. The appellant’s approved sentence was a bad-conduct discharge and confinement for 75 days. Having given individualized consideration to this particular appellant, the nature of the offenses, the appellant’s record of service,² and all other matters in the record of trial, we hold that the approved sentence is not 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL




CHRISTINA E. PARSONS, TSgt, USAF
Deputy, Clerk of the Court

² In addition to the charged offenses, the appellant’s military record includes numerous administrative actions. The appellant received nonjudicial punishment under Article 15, UCMJ, 10 U.S.C. § 815; vacation of the nonjudicial punishment; eight letters of reprimand; two letters of counseling; and one letter of admonishment. The appellant received these actions for making false official statements, failing to go, dereliction of duty, assaulting his wife, and failing to pay just debts.