

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant DANE A. NARO
United States Air Force

ACM S32305

1 September 2016

Sentence adjudged 23 January 2015 by SPCM convened at Joint Base Lewis-McChord, Washington. Military Judge: L. Martin Powell (sitting alone).

Approved Sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-2.

Appellate Counsel for Appellant: Major Jeffrey A. Davis.

Appellate Counsel for the United States: Lieutenant Colonel Robert Ramirez and Gerald R. Bruce, Esquire.

Before

MAYBERRY, BROWN, and KIEFER
Appellate Military Judges

OPINION OF THE COURT

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 18.4.

KIEFER, Judge:

Appellant was convicted by a military judge, pursuant to his pleas, of one specification of larceny and one specification of wrongful use of heroin on divers occasions. The military judge sentenced Appellant to a bad-conduct discharge, confinement for 6 months, and reduction to E-2. There was a pre-trial agreement that limited the confinement to 6 months if a bad-conduct discharge was adjudged or 9 months if no bad-conduct discharge was adjudged. The convening authority approved the sentence as adjudged. Appellant alleges that his sentence, particularly the bad-conduct discharge,

was inappropriately severe. Finding no error that materially prejudices a substantial right of Appellant, we affirm the findings and sentence.

Background

In November 2014, while stationed at Joint Base Lewis-McChord, Appellant rented space in the home of his wife's former co-worker. One room in the home contained the homeowner's late father's extensive collection of sports memorabilia. Between on or about 8 November and on or about 13 November 2014, Appellant stole items of memorabilia from the home and sold them at a local sports memorabilia shop. Appellant admitted the value of the items was over \$500. An owner of a sports memorabilia shop informally valued the items at more than \$29,000. Appellant testified he stole the memorabilia because he was having financial difficulties. The record indicates the items were ultimately returned to the homeowner and the money for these items was returned to the sports memorabilia shop owner.

Between December 2014 and January 2015, Appellant also wrongfully used heroin on divers occasions. He was initially identified as using illegal substances when he went to the hospital to be treated for an illness. Following this incident, the unit received notification that Appellant's random urinalysis sample collected in December 2014 tested positive for heroin and other illegal substances.

Sentence Severity

Appellant argues that a punitive discharge in his case was inappropriately severe for three reasons: (1) his illegal drug use was the result of the Air Force negligently managing his pain through excessive prescriptions of addictive pain medication and then later removing him from medication intended to help with his dependence on prescription narcotics; (2) the stolen property was returned to the victim; and (3) Appellant took responsibility for his misconduct by pleading guilty. Nevertheless, in evaluating the sentence in this case of a bad-conduct discharge, 6 months confinement, and reduction to E-2, we find the sentence adjudged and approved correct in law and fact based on the entire record.

This court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). 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[s], the appellant's record of service, and all matters contained in the record of trial." *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009). Although we are accorded great discretion in determining whether a particular

sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010).

Appellant was found guilty pursuant to his pleas of stealing and selling for profit items of a value of more than \$500. The victim trusted Appellant because Appellant was in the Air Force, and the victim was friends with Appellant's wife. The victim opened up her home to Appellant to help with her own financial difficulties. Appellant took advantage of that generosity and stole over \$29,000 of memorabilia from the victim's late father's collection.

Appellant also wrongfully used heroin on multiple occasions. Though Appellant asserts that this wrongful use of heroin is linked to the Air Force's purported mismanagement of his addiction to prescription pills, he admits that he made the decisions to steal and use illegal drugs, nothing forced him to make those decisions, and other alternatives were available to him. When he sought refuge in illegal drugs to address a situation he says he could no longer control, he chose not to request assistance from his command, his medical providers, or seek other treatment options. Instead, he chose to use heroin and steal from his landlord.

After reviewing the entire record and giving individualized consideration to the nature and seriousness of the offenses and the character of the offender, we are convinced the sentence is appropriate. *See United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). To conclude otherwise would, under the specific facts and circumstances of this case, amount to an exercise of clemency.*

Conclusion

The approved findings and sentence are correct in fact and law, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the approved findings and sentence are **AFFIRMED**.



FOR THE COURT

A handwritten signature in black ink, appearing to read "Laquitta J. Smith".

LAQUITTA J. SMITH
Appellate Paralegal Specialist

* In so concluding, we recognize that sentence appropriateness under Article 66(c), UCMJ, 10 U.S.C. § 866(c), is distinct from whether the Secretary of the Air Force may review the case and determine if any relief is warranted under Article 74(b), UCMJ, 10 U.S.C. § 814(b).