UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class TREVOR L. NELSON
United States Air Force

ACM 35083

17 October 2003

Sentence adjudged 17 January 2002 by GCM convened at Patrick Air Force Base, Florida. Military Judge: Mary Boone.

Approved sentence: Bad-conduct discharge, confinement for 4 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Maria A. Fried.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Lori M. Jemison (legal intern).

Before

VAN ORSDOL, MALLOY, and GRANT
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was convicted of four specifications, in violation of Article 112a, UCMJ, 10 U.S.C § 912a. Among these offenses are one specification of wrongful introduction of 4.28 grams of marijuana onto Patrick Air Force Base (AFB) with the intent to distribute and one specification of wrongful introduction of 3.4 grams of marijuana on to Patrick AFB. Both offenses occurred at the same time and arise out of the same off-base purchase from a civilian drug dealer. The former amount was purchased for a friend, who unbeknownst to the appellant was working as an informant for the Air Force Office of Special Investigations (AFOSI), and the latter was purchased for the appellant's personal consumption. The appellant was also convicted of distributing the 4.28 grams of marijuana to the undercover informant. The military judge

accepted the appellant's plea to both introduction specifications and then consolidated them for purposes of sentencing before members. As a result of the military judge's ruling, the appellant was not exposed to a greater sentence as a result of this charging decision.

I. Unreasonable Multiplication of Charges

The appellant now asks, as he did at trial, that Specifications 3 and 4 of the Charge be consolidated for findings. We agree with him and will take corrective action in our decretal paragraph.

Multiplicity and unreasonable multiplication of charges are distinct legal concepts. *United States v. Quiroz*, 55 M.J. 334 (C.A.A.F. 2001). The former prohibition ensures compliance with the constitutional and statutory restrictions against double jeopardy, and the latter protects against overreaching in the exercise of prosecutorial discretion in crafting charges against an accused. *Id.* Even where, as here, the offenses have been treated as one for sentencing, a convicted servicemember has a right not to carry on his record two convictions for what is essentially a single offense. *United States v. Savage*, 50 M.J. 244 (C.A.A.F. 1999); *United States v. Britton*, 47 M.J. 195, 202 (C.A.A.F. 1997).

Corrective action is, moreover, consistent with our statutory mandate under Article 66(c), UCMJ, 10 U.S.C.§ 866(c), to affirm only such findings of guilt and the sentence or such part or amount of the sentence as we find correct in law and fact. In reaching the conclusion that corrective action is warranted in this case, we have considered the fact that not only has the appellant been convicted of two introductions arising from his single purchase of marijuana but has also been convicted of distributing the 4.28 grams of marijuana to the AFOSI informant after returning to the base on the same date. Finally, we do not need to reassess the sentence since the military judge consolidated the two specifications for sentencing.

II. Sentence Severity

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant alleges that his sentence is inappropriately severe. We disagree. As stated before, this Court may only affirm those findings and sentences we find are correct in law and fact and determine, on the basis of the entire record, should be approved. Article 66(c), UCMJ. In determining sentence appropriateness, we must exercise our judicial powers to assure that justice is done and that the accused receives the punishment he deserves. Performing this function does not authorize this Court to grant clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this responsibility is to give individualized consideration to an appellant on the basis of the nature and seriousness of the offenses and the character of appellant. *United*

States v. Snelling, 14 M.J. 267, 268 (C.M.A. 1982). Applying this standard, we find that the appellant's sentence is not inappropriately severe.

III. Conclusion

Specifications 3 and 4 of the Charge are consolidated as follows: "In that AIRMAN FIRST CLASS TREVOR L. NELSON, 45th Civil Engineer Squadron, Patrick Air Force Base Florida, did, on or about 25 June 2001, wrongfully introduce 7.68 grams of marijuana onto an installation used by the armed forces, to wit: Patrick Air Force Base, Florida, with the intent to distribute 4.28 grams of the said marijuana." The findings as modified and sentence as approved 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 modified findings and approved sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator