

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic JASON F. NUTTING
United States Air Force

ACM S31414

16 September 2008

Sentence adjudged 08 November 2007 by SPCM convened at Ali Al Salem Air Base, Kuwait. Military Judge: Dawn R. Eflein (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 1 month, and forfeiture of \$867.00 pay per month for two months.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Lance J. Wood.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Ryan N. Hoback.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of wrongful distribution of Valium, and one specification of wrongful use of Valium, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The approved sentence consists of a bad-conduct discharge, confinement for 1 month, and forfeitures of \$867.00 per month for 2 months.

The issue on appeal is whether a bad-conduct discharge is an excessively harsh approved sentence for wrongfully distributing three tablets of Valium and wrongfully using Valium on one occasion. We find this issue to be without merit, and affirm.

Background

The appellant was deployed to Camp Bucca, Iraq in February 2007 for six months. His deployment was extended until September 2007. The night before he was to embark on his journey home, the appellant acquired some amount of Valium from an interpreter. He used three of the tablets in order to calm down. After that, a fellow airman asked the appellant if he had any Valium so the appellant gave the airman three tablets of Valium.

When he arrived at the helicopter pad in the early morning hours, the appellant was observed to be impaired and slurring his speech. He was confronted, confessed, and consented to a urinalysis which was positive for the drug Valium.

Earlier during the same deployment, the appellant received an Article 15, UCMJ, for wrongfully inhaling aerosol propellants on divers occasions.*

Discussion

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, the appellant’s record of service, and all matters contained in the record of trial. *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).

After a careful review of the record of trial, to include the appellant’s post-trial submissions, we conclude the appellant’s sentence to a bad-conduct discharge is not inappropriately severe. Not only was the appellant convicted of wrongfully using a controlled substance, but he was also convicted of distributing a controlled substance to a fellow airman, all while deployed to a combat zone.

Conclusion

The approved findings and the 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).

* Inhaling aerosol propellants is commonly referred to as “huffing.”

Accordingly, the approved findings, and sentence, are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, YA-02, DAF
Clerk of the Court