

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

Senior Airman ROBERT B. O'NEILL III  
United States Air Force

ACM S31582

15 January 2009

Sentence adjudged 04 June 2008 by SPCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Ronald A. Gregory (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Jennifer J. Raab.

Appellate Counsel for the United States: Colonel Gerald R. Bruce 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 the appellant's pleas, a military judge sitting as a special court-martial convicted him of one specification of being absent without leave, one specification of dereliction of duty, and one specification of wrongful divers use of cocaine, in violation of Articles 86, 92, and 112a, UCMJ, 10 U.S.C. §§ 886, 892, 912a. The adjudged and approved sentence consists of a bad-conduct discharge, three months confinement, and a reduction to E-1. On appeal the appellant asks the Court to disapprove his bad-conduct discharge or, in the alternative, grant other meaningful

sentencing relief. The basis for his request is that he opines his sentence is inappropriately severe.\* Finding no error, we affirm.

### *Background*

On 8 January 2008, the appellant, a member of the Massachusetts Air National Guard, was called to active duty. In March 2008, the appellant deployed to Curacao, Netherland Antilles, in support of counter drug operations. On 21 March 2008, while partying with friends at a local bar, the appellant purchased cocaine from a local civilian and snorted the cocaine in his hotel room. On the evening of 9 April 2008, the appellant was again partying with friends at a local bar, and in the early hours of 10 April 2008, he decided to break a 0200 hours curfew imposed by his squadron commander.

At the end of his evening, the appellant got in a taxi cab but discovered he had no money so the taxi cab driver drove him around to find a working ATM. After getting cash, the appellant decided to go to a local brothel instead of going back to his hotel. While en route, the taxi cab driver offered the appellant some cocaine, and the appellant promptly snorted it. The appellant spent a few hours at the brothel and, because of an overindulgence of alcohol, overslept and was late to work. After arriving at work, the appellant confessed to his first sergeant and eventually, after a proper rights advisement and waiver of rights, confessed to the Air Force Office of Special Investigations.

### *Inappropriately Severe Sentence*

This Court reviews 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).

In the case at hand, use of illegal drugs is a serious offense which compromises the appellant's standing as a military member. Moreover, the fact that the appellant engaged in the very crimes he was deployed to help prevent increases the seriousness of his actions. After carefully examining the submissions of counsel, the appellant's 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 inappropriately severe.

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\* The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

*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