

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ALICIA M. PERRYMAN
United States Air Force

ACM S30162

26 January 2005

Sentence adjudged 1 July 2002 by SPCM convened at Tyndall Air Force Base, Florida. Military Judge: John J. Powers.

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

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Lance B. Sigmon.

Before

MALLOY, JOHNSON, and GRANT
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

JOHNSON, Judge:

We have examined the record of trial, the assignments of error, and the government's reply thereto. Although it is improper for a witness to testify that an accused does not have rehabilitative potential *in the Air Force*, we do not find plain error here. *United States v. Ohrt*, 28 M.J. 301 (C.M.A. 1989); *United States v. Bish*, 54 M.J. 860 (A.F. Ct. Crim. App. 2001). We hold the improper testimony of the squadron section commander did not materially prejudice the appellant's substantial rights. *United States v. Williams*, 50 M.J. 397 (C.A.A.F. 1999); *United States v. Powell*, 49 M.J. 460 (C.A.A.F. 1998); *United States v. Hampton*, 40 M.J. 457 (C.M.A. 1994). In this case, absent the

improper testimony, a punitive discharge was inevitable in light of the severity of the offense (divers use of ecstasy), the appellant's relatively short career (a little over two years), one enlisted performance report (a referral), and her robust disciplinary record (six letters of reprimand, four of which were given *after* she confessed to illegal drug use, and four letters of counseling). Furthermore, we are confident that, although the sentencing worksheet was slightly irregular in form, such flaw was remedied by the military judge's unambiguous verbal and written instructions to the members, informing them of their unbridled discretion in imposing a sentence that included or did not include a reduction in any rank below E-3.

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 findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator