

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Airman First Class KYLE P. PIEROTTI**  
**United States Air Force**

**ACM S31397**

**16 September 2008**

Sentence adjudged 05 October 2007 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Grant L. Kratz (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Matthew S. Ward.

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 absence without leave (AWOL) terminated by apprehension,<sup>1</sup> one specification of wrongful use of cocaine, one specification of divers wrongful use of ecstasy, and one specification of wrongful use of methamphetamine, in violation of Articles 86 and 112a, UCMJ, 10 U.S.C. §§ 886, 912a. The approved sentence consists of a bad-conduct discharge, confinement for 7 months, and reduction to E-1.

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<sup>1</sup> The appellant was AWOL for approximately three hours.

The issue on appeal is whether the appellant's sentence is inappropriately severe.<sup>2</sup> We find this issue to be without merit and affirm.

### *Background*

In June 2007, the appellant decided to use cocaine at a friend's house. The next day, the appellant used ecstasy, which he had purchased from a civilian at a local restaurant. Due to the results of a urinalysis, it became apparent to the appellant that the ecstasy was laced with methamphetamine.

On 25 June 2007, the appellant and two active duty friends decided to go to Mexico instead of going to work. They were pulled over by local authorities near the Mexican border because their vehicle had a broken taillight. Upon learning the appellant and his friends were AWOL, the authorities apprehended the appellant and his friends and returned them to military control. Not long after his apprehension, the appellant used ecstasy again at a 4th of July party.

The appellant was called into the Air Force Office of Special Investigations (AFOSI) on several occasions and confessed. He also acted as an informant for the AFOSI.

### *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 is not inappropriately severe.

### *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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

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<sup>2</sup> The appellant raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



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