

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman JASON B. PUDELSKI
United States Air Force**

ACM 36562

15 June 2007

Sentence adjudged 15 November 2005 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Bruce T. Smith (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Vicki A. Belleau.

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

Before

**JACOBSON, PETROW, and ZANOTTI
Appellate Military Judges**

PER CURIAM:

A general court-martial, consisting of a military judge, found the appellant guilty in accordance with his pleas of two specifications of wrongful use of cocaine and one specification of wrongful possession of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. He was sentenced to a bad-conduct discharge, confinement for 13 months, and reduction to E-1. The convening authority approved the bad-conduct discharge, reduction in grade, and 12 months of confinement, in accordance with the terms of his pretrial agreement. The convening authority also waived the mandatory forfeitures of pay and allowances, which were deposited into the Ohio Child Support Processing Center on behalf of the appellant's children.

Before this court, the appellant argues, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), that his sentence is inappropriately severe and asks this Court to reassess his sentence. We disagree and affirm.

The appellant's testimony and the stipulation of fact in support of his guilty plea outline that the appellant was apprehended for making an improper turn in an effort to avoid a road checkpoint. Appellant was driving with a suspended license and did not want to be caught. He was pursued by a law enforcement officer who asked him whether he possessed any drugs; the appellant admitted that he had cocaine. The substance was seized and the appellant apprehended. He was placed into pretrial confinement for two days, where he provided a urine sample giving rise to the first specification of wrongful use of cocaine. A few weeks later, law enforcement personnel were called to an off-base nightclub on the report that the appellant claimed to have drugs. Circumstances there gave rise to a probable cause authorization to seize the appellant's urine. The sample collected tested positive for cocaine, resulting in the second specification of wrongful use of cocaine. In the presentencing phase of trial, government counsel offered 17 exhibits, 13 of which outlined a pattern of misconduct dating back to more than two years before the first charged offense in a seven-year career.

This Court "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). In order to determine the appropriateness of the sentence, this Court must consider 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. *See United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982). The consideration of a grant of clemency, or mercy, is a separate analysis, not part of this Court's charter. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). Having considered all the circumstances of the appellant's offenses, in light of his military record and the matters contained in the record of trial, we find the sentence to be appropriate. *Id.*

The approved findings and sentence are correct in law and fact, and no error prejudicial to the appellant's substantial rights occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator