

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class TRISTAN C. RAND
United States Air Force**

ACM S30255

25 May 2004

Sentence adjudged 5 November 2002 by SPCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 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, Lieutenant Colonel Robert V. Combs, and Captain Kevin P. Stiens.

Before

STONE, MOODY, and JOHNSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error,¹ and the government's reply thereto. We find the appellant's sentence is not inappropriately severe. Article 66(c), UCMJ, 10 U.S.C. § 866(c), requires that we affirm only so much of the sentence as we find "should be approved." In determining sentence appropriateness, we must exercise our judicial powers to assure that justice is done and that the appellant receives the punishment he or she deserves. Performing this function does not authorize this Court to exercise clemency. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The primary manner in which we discharge this responsibility is to give individualized consideration to an appellant, including the nature and seriousness

¹ This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

of the offenses and the character of the appellant's service. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We considered the appellant's relatively short career, the seriousness of his pattern of criminal behavior (divers use of cocaine, which involved two uses with a fellow airman and uses at public establishments), and matters in extenuation and mitigation. Applying the legal standard stated above to the facts of this case, we find that the appellant's sentence is not inappropriately severe.

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). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner