

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant **JESSE I. RANNEY**
United States Air Force

ACM S31046 (f rev)

14 July 2009

Sentence adjudged 26 October 2005 by SPCM convened at Kadena Air Base, Japan. Military Judge: Steven A. Hatfield.

Approved sentence: Bad-conduct discharge, confinement for 90 days, forfeiture of \$400.00 pay per month for 3 months, reprimand, and reduction to E-3.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, Major John M. Page III, and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Major Jeremy S. Weber, Major John P. Taitt, and Captain Naomi N. Porterfield.

Before

HEIMANN, FRANCIS, and JACKSON
Appellate Military Judges

UPON FUTHER REVIEW

This opinion is subject to editorial correction before final release.

PER CURIAM:

Contrary to his pleas, a panel of enlisted members and officers sitting as a special court-martial convicted the appellant of one specification of willfully disobeying a superior commissioned officer and one specification of willfully disobeying a non-commissioned officer, in violation of Articles 90 and 91, UCMJ, 10 U.S.C. §§ 890, 891. The adjudged and approved sentence consists of a bad-conduct discharge, 90 days

confinement, forfeitures of \$400 pay per month for three months, a reduction to the grade of E-3, and a reprimand. On 31 March 2008, this Court affirmed the findings and the sentence. *United States v. Ranney*, ACM S31046 (A.F. Ct. Crim. App. 31 Mar 2008) (unpub. op.).

On review, our superior court: (1) set aside and dismissed the willfully disobeying a superior commissioned officer specification; (2) affirmed a finding of guilty on the lesser included offense of failure to obey an order, in violation of Article 92, UCMJ, 10 U.S.C. §892; (3) affirmed this Court's finding of guilty on the willfully disobeying a non-commissioned officer specification; (4) reversed this Court's affirmation of the sentence; and (5) returned the case to this Court with instructions to either reassess the sentence based on the appellant's convictions for violation of Articles 91 and 92, UCMJ, or return the case to the convening authority for a rehearing, if we are unable to reassess the sentence. *United States v. Ranney*, USCA Dkt. No. 08-0596/AF.

Before reassessing a sentence, this Court must be confident "that, absent any error, the sentence adjudged would have been of at least a certain severity." *United States v. Sales*, 22 M.J. 305, 308 (C.M.A. 1986). A "dramatic change in the penalty landscape" gravitates away from our ability to reassess a sentence. *United States v. Riley*, 58 M.J. 305, 312 (C.A.A.F. 2003). Ultimately, a sentence can be reassessed only if we "confidently can discern the extent of the error's effect on the sentencing authority's decision." *United States v. Reed*, 33 M.J. 98, 99 (C.M.A. 1991). If we cannot determine that the sentence would have been at least of a certain magnitude, we must order a rehearing. *United States v. Harris*, 53 M.J. 86, 88 (C.A.A.F. 2000) (citing *United States v. Poole*, 26 M.J. 272, 274 (C.M.A. 1988)).

After our superior court's holding, the maximum sentence remains the same, that which is within the jurisdictional limit of a special court-martial -- a bad-conduct discharge, 12 months confinement, forfeitures of two-thirds pay per month for 12 months, and a reduction to the grade of E-1. Thus, the penalty landscape remains the same. Applying the criteria set forth in *United States v. Sales*, we conclude that we are able to determine what sentence would have been imposed based on the charges and specifications which were upheld by our superior court. In reassessing the sentence, we note that all of the evidence properly before the members on the charged offense (willful disobedience of a superior commissioned officer) are equally applicable to the lesser included offense (failure to obey a lawful order). We are convinced beyond a reasonable doubt that the panel would have awarded a sentence of at least a bad-conduct discharge, 60 days confinement, forfeitures of \$400 pay per month for two months, a reduction to the grade of E-3, and a reprimand; we reassess the sentence accordingly. Furthermore, we find the sentence, as reassessed, to be appropriate. See *United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990).

Conclusion

The findings having previously been modified and affirmed by our superior court, the reassessed sentence is 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 sentence, as reassessed, is

AFFIRMED.

OFFICIAL



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