UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant ANTHONY W. RODRIGUEZ
United States Air Force

ACM 36282

10 May 2006

Sentence adjudged 10 February 2005 by GCM convened at Lackland Air Force Base, Texas. Military Judge: Barbara E. Shestko.

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-2.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major David P. Bennett, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Nurit Anderson.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

The appellant was convicted pursuant to his plea, by a general court-martial convened at Lackland Air Force Base, Texas, of committing carnal knowledge, in violation of Article 120, UCMJ, 10 U.S.C. § 920. A panel of officer members sentenced him to a bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-2. The convening authority approved the findings and the adjudged sentence, with the exception of the forfeiture of all pay and allowances. The case is before this Court for review under Article 66, UCMJ, 10 U.S.C. § 866.

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant asks this Court to order a new sentencing hearing or reassess his sentence because he asserts the military judge erroneously admitted improper sentencing evidence. Specifically, he contends that the military judge

should not have allowed the members to hear evidence concerning the victim's complications during her pregnancy. We disagree.

Our review of a military judge's decision to admit evidence is limited to whether she has abused her discretion. *United States v. Dorsey*, 38 M.J. 244, 246 (C.M.A. 1993). To find an abuse of discretion, we must be convinced that the military judge's decision was clearly untenable and deprived the appellant of a substantial right such as to amount to a denial of justice. *United States v. Travers*, 25 M.J. 61, 62 (C.M.A. 1987) (citing *Guggenmos v. Guggenmos*, 359 N.W.2d 87, 90 (1984).

In the sentencing case, the trial counsel may present evidence as to any aggravating circumstances directly relating to or resulting from the offenses of which the accused has been found guilty. Rule for Courts-Martial (R.C.M.) 1001(b)(4). Evidence of aggravating circumstances qualifying for admission during presentencing must also pass the evidentiary rule requiring that the probative value of the evidence be substantially outweighed by its prejudicial effect. The military judge has wide discretion in applying this rule. R.C.M. 1001(b)(4); Mil. R. Evid. 403.

In the instant case, the military judge conducted a Mil R. Evid. 403 balancing test and determined that the complications during the victim's pregnancy were aggravating circumstances, directly related to, and resulted from the appellant's acts. We agree. We therefore conclude that the military judge did not abuse her discretion when she denied the defense's motion in limine to exclude such evidence.

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator