UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman BRAYAN I. ROSALES-LOPEZ
United States Air Force

ACM 38276

28 October 2013

Sentence adjudged 27 November 2012 by GCM convened at Vandenberg Air Force Base, California. Military Judge: W. Shane Cohen (sitting alone).

Approved Sentence: Bad-conduct discharge, confinement for 8 months, reduction to E-1, and a reprimand.

Appellate Counsel for the Appellant: Major Daniel E. Schoeni and Dwight H. Sullivan, Esquire.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major John M. Simms; and Gerald R. Bruce, Esquire.

Before

ORR, HARNEY, and MITCHELL
Appellate Military Judges

OPINION OF THE COURT

PER CURIAM:

In accordance with his pleas, the appellant was convicted at a general court-martial comprised of a military judge sitting alone, of one charge and one specification of abusive sexual contact with a child who had attained the age of 12, but had not attained the age of 16 years, in violation of Article 120, UCMJ, 10 U.S.C § 920. The adjudged and approved sentenced consisted of a bad-conduct discharge, confinement for 8 months,

reduction to E-1, and a reprimand. Before this Court, the appellant asserts the punitive discharge portion of his sentence is inappropriately severe.[1]

Background

The appellant was assigned to Vandenberg Air Force Base, California (CA), and operated heavy equipment in the Civil Engineer Squadron. He volunteered with the local Big Brothers Big Sisters (BBBS) program in September 2010. It was through BBBS that he met and began a relationship with PJ, a 12-year-old boy whose father was no longer in his life. From September 2011 to December 2011, the two began spending more time with each other. PJ's mother gave permission for PJ to accompany the appellant, the appellant's supervisor, Technical Sergeant (TSgt) DT, and TSgt DT's family on a trip to Universal Studios in Los Angeles, CA. She also gave her permission for PJ to spend the night at TSgt DT's home in anticipation of an early departure. TSgt DT's family slept in their own rooms, while the appellant and PJ slept in the living room.

During the *Care*[2] inquiry, the appellant admitted touching PJ's genitalia during that evening. He said he grabbed PJ's genitals through clothing while the two of them were wrestling. The stipulation of fact indicates that if PJ had been called to testify, he would have testified that the appellant put his hand down PJ's shorts and underwear and grabbed his penis for five to seven seconds. PJ would further testify he tried to push the appellant's hand away, but the appellant did not move his hand, and PJ finally told him to stop. PJ was initially afraid to tell anyone of the incident, but ultimately told his mother in late-January 2012. A few days after the appellant learned PJ reported the incident to his mother, he attempted suicide by sitting in an idling vehicle with a tube channeling exhaust from the tailpipe into the vehicle. A game warden encountered the appellant and rescued him shortly before he died of carbon monoxide poisoning.

The appellant's unsuccessful suicide attempt caused traumatic brain injury and resulted in memory loss. He also suffered a permanent partial-loss of function to his right arm. As a result of his injuries, he knows his memory has been affected. However, he specifically remembers the incident occurred on the floor while wrestling but said he "does not have any evidence to contradict [PJ's] testimony."

Sentence Appropriateness

The appellant argues his sentence to a bad-conduct discharge is inappropriately severe. He asserts he is still an asset to the Air Force and the permanent injuries from his suicide attempt "further indicate the inappropriate severity of a bad-conduct discharge."

[1] This issue was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).
[2] *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

We review sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). 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 offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). *See also United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We have a great deal of discretion in determining whether a particular sentence is appropriate but are not authorized to engage in exercises of clemency. *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

The appellant's actions demonstrate a clear deviation from the established standards of military conduct. He corrupted the goals of a program designed to help at-risk children to serve his own selfish deviant desires. A Government expert testified how individuals volunteer for organizations such as BBBS to gain access to vulnerable children and begin a long process of grooming in order to eventually break down the normal social and psychological barriers that would prevent inappropriate sexual touching and the reporting of its occurrence. The appellant's behavior tracked this model and PJ was certainly emotionally traumatized by his actions. The appellant's status as a member of the United States Air Force was a key factor in why PJ's mother thought he would be a good mentor for her son. Now PJ and his mother's trust and positive image of the Air Force is severely damaged. After carefully examining the submissions of counsel, the entire record, as well as appellant's military record, and taking into account all the facts and circumstances surrounding the offenses for which he was found guilty, we do not find the appellant's sentence, including the bad-conduct discharge, inappropriately severe. We find the approved sentence was clearly within the discretion of the convening authority and was appropriate in this case.

Conclusion

The approved findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the approved findings and sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court