

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Staff Sergeant MAXIMINO ROSAS, JR.
United States Air Force**

ACM 37624

30 March 2011

Sentence adjudged 18 December 2009 by GCM convened at Randolph Air Force Base, Texas. Military Judge: Michael J. O'Sullivan (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 3 years, forfeiture of all pay and allowances, fine of \$26,000.00, reduction to E-1, and a reprimand.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford, Major Darrin K. Johns, and Captain Andrew J. Unsicker.

Appellate Counsel for the United States: Colonel Don M. Christensen, Major Megan E. Middleton, and Gerald R. Bruce, Esquire.

Before

BRAND, GREGORY, and ROAN
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

GREGORY, Senior Judge:

A general court-martial composed of military judge alone convicted the appellant in accordance with his pleas of five specifications of possession of various illegal drugs,¹

¹ The appellant possessed a variety of drugs, including gamma hydroxybutyric acid (commonly called GHB) (Schedule I), methamphetamine (Schedule II), methylphenidate (commonly called Ritalin) (Schedule II), alprazolam (commonly called Xanax) (Schedule IV), and 3, 4-methylenedioxy methamphetamine (commonly called ecstasy) (Schedule I).

one specification of possession of ketamine with intent to distribute, and one specification of distribution of ketamine on divers occasions. The court-martial sentenced the appellant to a dishonorable discharge, confinement for four years, a fine of \$26,000 with contingent confinement of 18 months if the fine is not paid, total forfeitures, reduction to E-1, and a reprimand. A pretrial agreement capped confinement at three years. The convening authority approved the dishonorable discharge, confinement for three instead of four years, the fine without the contingent confinement, the forfeitures, reduction, and reprimand. The appellant argues that his sentence is inappropriately severe.²

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *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). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004), *aff'd in part and rev'd in part on other grounds*, 60 M.J. 368 (C.A.A.F. 2004).

A civilian tip led Texas and Air Force law enforcement agents to the appellant's off-base home with a search warrant where they found a variety of controlled substances. The appellant confessed to possessing the illegal drugs for his personal use and recreation. Also, from about June to November 2008, the appellant sold ketamine, a Schedule III controlled substance also known as Special K, on multiple occasions to a civilian, Mr. DM. As Mr. DM traveled about the country, he would place orders for ketamine with the appellant who then sent the drugs to him via Federal Express. The appellant stipulated that he received a total of about \$34,000 from Mr. DM for the ketamine. The appellant maintained his supply of illegal drugs for use and distribution by purchasing them on bi-monthly trips to Mexico.

Casting aside the positive qualities referenced in the character letters submitted on his behalf, the appellant simply took advantage of an opportunity to make money dealing drugs: "I never intended to be a 'drug dealer,' it was just an opportunity that came up" He quibbles with the amount that he profited from his multiple drug transactions in an effort to show the fine is too severe, but fines do not depend on a cash-flow analysis of illegal activity. A fine may be adjudged even in the absence of unjust enrichment. *United States v. Stebbins*, 61 M.J. 366, 370-72 (C.A.A.F. 2005) (upholding a \$75,000 fine where there was no evidence of unjust enrichment). Here, the appellant

² This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

clearly profited from the drug dealing opportunity presented to him, and we find the adjudged and approved fine entirely appropriate.

In his Action the convening authority issued the following reprimand:

Your criminal drug dealing activities while serving as a noncommissioned officer in the United States Air Force were selfish, greedy, reckless and dangerous. The many calculating steps you took to accomplish your criminal activity – from purchasing large quantities of drugs in Mexico, to cooking and packaging and shipping the drugs for individual sales across this country – reflect your complete disregard for federal and state laws, Air Force regulations and the safety of others. You have disgraced yourself, your unit and the United States Air Force.

General Court-Martial Order (GCMO) No. 6, Headquarters Nineteenth Air Force (AETC), Randolph Air Force Base, Texas (1 March 2010). Well said. Having considered the sentence de novo in light of the appellant's character, the nature and seriousness of his offenses, and the entire record of trial, we do not find the appellant's sentence inappropriately severe.

Conclusion

The approved findings and the 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 the sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a faint, circular official stamp.

STEVEN LUCAS
Clerk of the Court