

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant MARC V. RYLEE
United States Air Force

ACM 35957

25 January 2006

Sentence adjudged 15 April 2004 by GCM convened at Goodfellow Air Force Base, Texas. Military Judge: Mary M. Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Sandra K. Whittington, and Captain Christopher S. Morgan.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Major John C. Johnson, and Major Kevin P. Stiens.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

The appellant was tried at Goodfellow Air Force Base, Texas, by a military judge sitting as a general court-martial. In accordance with his pleas, the appellant was convicted of one specification of carnal knowledge, in violation of Article 120, UCMJ, 10 U.S.C. § 920. The convening authority approved a sentence of a bad-conduct discharge, confinement for 9 months, and reduction to E-1.¹

The appellant asserts that the trial counsel engaged in prosecutorial misconduct, first by presenting testimony of the victim's grandmother to convey the impression to the court that the appellant was the only person to engage in sexual intercourse with the

¹ The military judge sentenced the appellant to a bad-conduct discharge, confinement for 18 months, and reduction to E-1. The appellant and the convening authority entered into a pretrial agreement that, among other terms, capped confinement at 24 months.

victim, then by exploiting that impression in the course of her sentencing argument to the military judge. He also asserts that his trial defense counsel was ineffective during the presentencing proceedings by failing to proffer evidence of the victim's other sexual relations.

We find nothing objectionable with the testimony of the victim's grandmother regarding the impact of the appellant's misconduct. The trial counsel's questions of her were narrowly drawn, and her answers fairly linked the appellant's actions to the impact on her and her granddaughter. There is no basis to conclude that the trial counsel overstepped the bounds of propriety and fairness. See *United States v. Fletcher*, 62 M.J. 175, 178 (C.A.A.F. 2005).

The trial defense counsel did not object to the trial counsel's argument, therefore we review for plain error. See *United States v. Barrazamartinez*, 58 M.J. 173, 175 (C.A.A.F. 2003); *United States v. Powell*, 49 M.J. 460, 464 (C.A.A.F. 1998). After examining the argument in the context of the entire court-martial,² we find nothing improper about the trial counsel's argument.³

The test for ineffective assistance of counsel is whether counsel's performance was deficient and, if so, whether the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Further, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)).

The strong presumption of competence has not been overcome. The trial defense counsel obviously considered the potential relevance of the victim's sexual history, having put the government on notice prior to trial that he might explore it. But the trial defense counsel's decision not to explore it at trial was sound on its face. Based on the limited victim impact testimony presented during sentencing, almost no benefit could have flowed to the appellant from an attack on his 14-year-old victim's sexual proclivities.⁴

In short, the facts asserted by the appellant fail to demonstrate deficient performance within the meaning of *Strickland*. We conclude that the appellant has not met his burden of showing specific defects in his counsel's performance that were

² See *United States v. Baer*, 53 M.J. 235, 238 (C.A.A.F. 2000).

³ Appellant defense counsel contends that the trial counsel "violated several ethical cannons" [sic]. The record is devoid of any evidence to support such a serious allegation.

⁴ The appellant could have been portrayed as trying to shift blame to the victim. Further, based on appellant defense counsels' representation to us, it appears the appellant was the first in a series of men to have sex with the victim. He could have been portrayed as the trigger for her downward moral spiral.

“unreasonable under prevailing professional norms.” See *United States v. Anderson*, 55 M.J. 198, 201 (C.A.A.F. 2001) (citing *Strickland*, 466 U.S. at 688-90).

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

ANGELA M. BRICE
Clerk of Court