

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class BENJAMIN P. SANCHEZ JR.
United States Air Force

ACM 37183

26 November 2008

Sentence adjudged 14 November 2007 by GCM convened at Aviano Air Base, Italy. Military Judge: Jennifer L. Cline (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 14 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Major Lance J. Wood.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Ryan N. Hoback.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Pursuant to the appellant's pleas, a military judge sitting as a general court-martial convicted him of one specification of wrongful divers use of marijuana, one specification of wrongful possession of marijuana, one specification of wrongful divers distribution of marijuana, one specification of wrongful divers introduction of marijuana, and one specification of assault consummated by a battery, in violation of Articles 112a and 128, UCMJ, 10 U.S.C. §§ 912a, 928. The military judge sentenced the appellant to a bad-conduct discharge, 15 months confinement, and a reduction to E-1. The convening authority approved the findings, the bad-conduct discharge, 14 months confinement, and

the reduction to E-1.¹ On appeal the appellant asks the Court to reduce his confinement to eight months. The basis for his request is that he opines that his sentence to 14 months confinement is excessively harsh.² We disagree; finding no error, we affirm.

Background

Shortly after arriving at Aviano Air Base, Italy, the appellant overheard two airmen discuss the possibility of traveling to Slovenia to purchase drugs. In December 2006, the appellant and three friends traveled to Slovenia. While there, the appellant purchased marijuana. On six other occasions between December 2006 and May 2007, the appellant purchased marijuana in Slovenia. On each occasion, the appellant brought the marijuana back with him to Aviano Air Base and stored the marijuana in his dormitory room.

Over the course of several months, the appellant smoked the marijuana with fellow airmen and co-workers, either in his dormitory room or off-base. On two occasions, the appellant smoked marijuana while on-duty. During this same time period, the appellant sold some of the marijuana for a profit to fellow airmen and two civilian employees. On 2 May 2007, the Air Force Office of Special Investigations (AFOSI) executed a search of the appellant's person and dormitory room and seized approximately 13 grams of marijuana from the appellant. On that same day, the appellant consented to a urinalysis; his urine sample was processed and tested positive for marijuana.

On 2 October 2007, the appellant got into an argument with his girlfriend and pushed her, punched her in the side of her face, and choked her.

Inappropriately Severe Sentence

This Court reviews 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).

In the case *sub judice*, the appellant's use, distribution, possession, and introduction of marijuana, along with his assault of his girlfriend, seriously compromise

¹ The appellant and the convening authority signed a pretrial agreement wherein the appellant agreed to plead guilty in return for the convening authority's promise not to approve confinement in excess of 20 months.

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

his standing as a military member. His drug crimes are further aggravated by the fact that he chose to involve fellow airmen in his endeavors, committed a majority of his crimes on-base, and had the temerity to smoke marijuana while performing his security forces' duties. In short, after carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offenses of which he was found guilty, we do not find the appellant's sentence excessively harsh or inappropriately severe.

Erroneous Promulgating Order

We note that in the Court-Martial Order (CMO), dated 22 February 2008, Specification 2 of Charge I incorrectly states "on divers occasions." Preparation of a corrected CMO is hereby directed. *See United States v. Smith*, 30 M.J. 1022, 1028 (A.F.C.M.R. 1990).

Conclusion

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



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