UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman MANUELA DEL CARMEN SCOTT
United States Air Force

ACM 36514

28 March 2007

Sentence adjudged 31 August 2005 by GCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: William A. Kurlander.

Approved sentence: Dishonorable discharge, confinement for 5 years, forfeiture of all pay and allowances, a fine of $4,000.00, and reduction to E-1.

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

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Matthew S. Ward.

Before

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM:

We examined the record of trial, the assignments of error, (including the documents submitted by the appellant in support of the assignments of error),[1] and the government's reply thereto. We hold that the addendum to the staff judge advocate's recommendation does not contain new matters and was not, therefore, required to be served on the appellant and her defense counsel for comment. *See* Rule for Courts-Martial (R.C.M.) 1106(f)(7) and its Discussion; *United States v. Gilbreath*, 57 M.J. 57 (C.A.A.F. 2002); *United States v. Chatman*, 46 M.J. 321 (C.A.A.F. 1997). We also hold that the evidence is legally and factually sufficient to support the appellant's conviction

[1] On 27 November 2006, this Court granted the appellant's motion to submit these documents.

for violating the Privacy Act of 1974.[2] *United States v. Turner*, 25 M.J. 324, 324-25 (C.M.A. 1987). We, like the court members, are convinced beyond a reasonable doubt that the appellant was predisposed to commit this offense and was not entrapped. *See* R.C.M. 916(g); *Jacobson v. United States*, 503 U.S. 540, 554 (1992); *United States v. Howell*, 36 M.J. 354, 359-60 (C.M.A. 1993); *United States v. Whittle*, 34 M.J. 206, 207-08 (C.M.A. 1992); *United States v. Vanzandt*, 14 M.J. 332 (C.M.A. 1982).

Article 66(c), UCMJ, 10 U.S.C. § 866(c), provides that this Court "may affirm . . . the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." In *Jackson v. Taylor*, 353 U.S. 569, 576-77 (1957), the Supreme Court considered the legislative history of Article 66, UCMJ, and concluded it gave the (then) Boards of Review the power to review not only the legality of a sentence, but also whether it was appropriate. Our superior court has also determined that the Courts of Criminal Appeals have the power to, "in the interests of justice, substantially lessen the rigor of a legal sentence." *United States v. Lanford*, 20 C.M.R. 87, 94 (C.M.A. 1955). *See also United States v. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002).

"Generally, sentence appropriateness should be judged by 'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). Sentence comparison is generally inappropriate, unless this Court finds that any cited cases are "closely related" to the appellant's case and the sentences are "highly disparate." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (citing *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985)). There is no basis to engage in sentence comparison in this case.

We have given individualized consideration to this particular appellant and carefully reviewed the facts and circumstances of this case. The sentence is within legal limits and no error prejudicial to the appellant's substantial rights occurred during the findings or sentencing proceedings. Nonetheless, we find that a sentence which includes 5 years confinement is inappropriately severe.

Conclusion

The 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). However, we affirm only so much of the sentence as includes a dishonorable discharge, confinement for 4 years, forfeiture of all pay and

[2] This assignment of error was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

allowances, a fine of $4,000.00, and reduction to E-1. Accordingly, the findings and sentence, as modified, are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator