UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class TANISHA C. SPARROW
United States Air Force

ACM 34851

30 January 2003

Sentence adjudged 24 October 2001 by GCM at Malmstrom Air Force Base, Montana. Military Judge: Mark R. Ruppert (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Major Patricia A. McHugh.

Appellate Counsel for the United States: Lieutenant Colonel Lance B. Sigmon and Captain C. Taylor Smith.

Before

BURD, ORR W.E., and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

CONNELLY, Judge:

At her general court-martial, the appellant was found guilty, in accordance with her pleas, of one specification of failure to go at the time prescribed to her appointed place of duty on divers occasions, four specifications of absence without leave, one specification of failure to obey a lawful order, and two specifications of wrongful use of marijuana in violation of Articles 86, 92, and 112a, UCMJ, 10 U.S.C. §§ 886, 892, 912a. The appellant was sentenced by a military judge to a bad-conduct discharge, confinement for 9 months, and reduction to E-1. The convening authority reduced the confinement to 6 months, but otherwise approved the adjudged sentence. The appellant now alleges that

she was subjected to illegal pretrial punishment for 80 days while held at a civilian detention center.

Due to a lack of detention facilities for women at Malmstrom Air Force Base, the appellant was detained at a small county detention facility 39 miles from the base. She contends that she was required to wear prison jumpsuits without rank, denied medical care and access to prescribed fluids and medications, co-mingled with convicted prisoners, subjected to sexual harassment by male prisoners, denied telephone privileges, as well as other confidential communications with her attorney, and visited only once by her squadron.

Article 13, UCMJ, 10 U.S.C. § 813, prohibits the imposition of punishment or penalty upon an accused prior to trial, as well as pretrial arrest or confinement conditions which are more rigorous than the circumstances required to ensure the accused's presence at trial. The imposition of a penalty prior to trial entails a purpose or intent to punish an accused before guilt or innocence has been adjudicated. *Bell v. Wolfish*, 441 U.S. 520 (1979). Pretrial confinement conditions that are more rigorous than the circumstances require may give rise to a permissible inference that an accused is being punished, or may be so excessive as to constitute punishment. *United States v. James*, 28 M.J. 214, 216 (C.M.A. 1989). *See United States v. Fricke,* 53 M.J. 149, 154 (2000), *cert. denied,* 531 U.S. 993 (2000).

The appellant in this case makes no claim that the imposition of pretrial confinement was done with a punitive intent. In the absence of a factual finding relating to the intent to punish, this Court will address the issue of illegal pretrial confinement de novo because the question of whether the appellant has been subjected to unlawful pretrial confinement is a mixed question of fact and law. *United States v. Mosby,* 56 M.J. 309, 310 (2002); *United States v. Smith,* 53 M.J. 168 (2000).

Here, the military judge made extensive findings of fact as to the confinement conditions and whether those conditions were more rigorous than the circumstances required. We have independently reviewed the findings of fact and find them to be complete and accurate. We note that the military judge found that the conditions of confinement alleged by appellant in several instances were not accurate or substantially less onerous than alleged. The decision to place the appellant in a civilian detention facility and the conditions of the appellant's pretrial confinement were supported by reasonable and legitimate government objectives. In addition, the two regulatory violations that actually occurred (the lack of visits by squadron members and inability to wear rank on her uniform) were not so excessive as to constitute punishment. Finally, the fact that the appellant never complained about her pretrial confinement conditions is

strong evidence that the appellant was not subjected to pretrial punishment.[1] *United States v. McCarthy,* 47 M.J. 162 (1997); *United States v. Palmiter*, 20 M.J. 90 (C.M.A. 1985).

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 (2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator

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[1] The appellant complained once that she was not seen promptly for medical care when requested. Due to the events of 11 September 2001, there was a delay in appointment scheduling. However, her first sergeant and commander made every reasonable effort to get her an appointment. She was seen within a week of her complaint.