UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ROSEMARIE P. STALEY
United States Air Force

ACM S31644

28 December 2009

Sentence adjudged 02 April 2009 by SPCM convened at Francis E. Warren Air Force Base, Wyoming. Military Judge: Don M. Christensen.

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Michael A. Burnat, and Major Imelda L. Paredes.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, and Gerald R. Bruce, Esquire.

Before

BRAND, HELGET, and GREGORY
Appellate Military Judges

PER CURIAM:

In accordance with her pleas, a military judge convicted the appellant of two specifications of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A panel of officer members sitting as a special court-martial sentenced the appellant to reduction to E-1, confinement for four months, and a bad-conduct discharge. The convening authority approved the sentence. On appeal, the appellant challenges the

appropriateness of the bad-conduct discharge.[1] Finding no error prejudicial to the substantial rights of the appellant, we affirm.[2]

Background

The appellant and two civilian friends traveled from Francis E. Warren Air Force Base, Wyoming, to a club in Denver, Colorado. While in the club, one of the appellant's civilian friends offered her some cocaine mixed with tobacco in a cigar. They went to the club's parking lot where the appellant and her friend smoked the cocaine-laced cigar. Two weeks later the appellant returned to Denver where she met a civilian friend at the friend's house and again smoked a cocaine-laced cigar. Urinalysis testing confirmed the presence of cocaine after each use. The providence inquiry supports acceptance of the plea to both wrongful uses of cocaine.

Sentence Appropriateness

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c). "We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006) (citing *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982)), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). We have a great deal of discretion in determining whether a particular sentence is appropriate but are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 287-88 (C.A.A.F. 1999); *Healy*, 26 M.J. at 395-96.

The appellant asserts that her sentence to a bad-conduct discharge is inappropriately severe, emphasizing her completion of drug and alcohol rehabilitation after the offenses as well as her status as a single parent. We disagree. Twice this appellant traveled some distance to use cocaine with a civilian supplier, leaving behind the young child whom she now uses to support her argument against imposition of a bad-conduct discharge. All the matters raised by the appellant were presented to the panel of officers who sentenced her as well as to the convening authority who approved the sentence; her argument on appeal is essentially a renewal of her request for clemency.

[1] The appellant raises this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

[2] The Staff Judge Advocate's Recommendation notes that after the trial someone discovered that the O-5 who served as court president was junior to the other O-5 member, but the appellant correctly notes that this procedural error was harmless. Rule for Courts-Martial 502(a) and (b); *United States v Pulliam*, 11 C.M.R. 95 (C.M.A. 1953) (failure of senior officer to act as president is harmless error that does not impact the jurisdiction of the court-martial).

Having given individualized consideration to this particular appellant, the nature of the offenses, the appellant's record of service, and all other matters in the record of trial, we hold that the approved sentence is not inappropriately severe.

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; *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