

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant PATRICIA A. STRICKLAND
United States Air Force

ACM 36554

17 October 2007

Sentence adjudged 10 September 2005 by GCM convened at Little Rock Air Force Base, Arkansas. Military Judge: William Burd (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 88 days, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Vicki A. Belleau.

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

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Contrary to her plea, the appellant was convicted of one specification of larceny of military property over \$500.00,¹ in violation of Article 121, UCMJ, 10 U.S.C. § 921. The approved sentence consists of a bad-conduct discharge, confinement for 88 days, total forfeitures, and reduction to E-1.²

¹ Specifically, she was charged with an amount of \$19,853.86. The military judge substituted the amount of \$19,759.50.

² The convening authority followed the military judge's recommendation of limiting confinement to time served as of action if a bad-conduct discharge was approved. Additionally, the convening authority deferred all forfeitures, adjudged and automatic, until action.

The issues on appeal are: 1) Whether the evidence is legally and factually insufficient to support the appellant's conviction for larceny, where the government failed to prove the element of intent beyond a reasonable doubt; and 2) Whether the appellant's sentence is inappropriately severe in light of the circumstances surrounding the offense and the mitigating factors.

Background

In December 2000, the appellant was assigned as a military recruiter to Meridian, MS. She was issued government quarters on the Navy base at Meridian. From December 2000 until October 2003, the appellant received basic allowance for housing (BAH) in excess of \$19,000.

When the appellant in-processed, she signed for her government quarters. She signed paperwork which indicated it was her responsibility to ensure she no longer received BAH while she occupied the quarters. The financial part of her in-processing paperwork was blank. Because she was geographically separated, her servicing Air Force finance office was located at Little Rock Air Force Base.

At the time of trial, the appellant was 40 years old, had been on active duty for over 18 years, and had received a number of degrees including several associate's degrees, a bachelor's degree, and a master's degree. She had been approved for a medical retirement.

The court-martial was thoroughly litigated. The theory developed by the government was that the appellant knew she was receiving the BAH, that she was not entitled to it, and that she had an affirmative duty to ensure she did not continue to receive the BAH over the 2-plus year timeframe. The defense posited she did nothing affirmatively to receive the BAH (which was true), she had made numerous phone calls to finance (also true), and that there was no intent to permanently deprive the owner of the funds. Additionally, the defense argued she was living in substandard quarters (never declared nor verified by any authority) and was therefore entitled to the money. Finally, the defense introduced evidence of memory problems based upon her extensive medical and mental health history. At the conclusion of the government's case, the defense made a motion for a finding of not guilty under Rule for Courts-Martial 917 which was denied. The basis was the same as the issue raised on appeal.³

In July 2003, the appellant was relieved of her recruiting duties due to her medical conditions and was approved for a medical retirement prior to trial. Her mother died from a very aggressive form of cancer several months before the trial and her 84-year-old

³ Also raised at trial, and mentioned in the appellant's brief, is that the amount stolen was not proven. This is without merit.

father depended on the appellant for assistance. Additionally, the appellant's husband was disabled, received social security for his disabilities, and was dependent upon the appellant for care and support.

Discussion

The test for factual sufficiency is whether this Court is convinced beyond a reasonable doubt of the appellant's guilt, after weighing all the evidence and making allowances for not having personally observed the witnesses. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Legal sufficiency requires, considering the evidence in the light most favorable to the government, determining whether any reasonable fact finder could have found all of the essential elements beyond a reasonable doubt. *Id.* at 324; *See also United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002); *United States v. Sills*, 56 M.J. 239, 240-41 (C.A.A.F. 2002).

After reviewing the record of trial, the post-trial submissions by counsel, and carefully considering the appellant's assertion, we conclude the evidence is legally and factually sufficient to sustain the conviction for the larceny of military property.

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 the appellant's claim regarding sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Our duty to assess the appropriateness of a sentence is "highly discretionary." *United States v. Lacy*, 50 M.J. 286, 287 (C.A.A.F. 1999). The responsibility for clemency, however, "was placed by Congress in [the convening authority's] hands." *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

We have given individualized consideration to this particular appellant and carefully reviewed the facts and circumstances of this case. Although, the appellant has had a very trying life, she stole in excess of \$19,000.00 of military property from December 2000 until October 2003. We conclude that the appellant's 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 findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF
Clerk of the Court