

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman RANDI J. STUMP
United States Air Force

ACM S31037

30 October 2007

Sentence adjudged 22 September 2005 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Mary Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 135 days, and reduction to E-1.

Appellate Counsel for the 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, Major Matthew S. Ward, and Captain Donna S. Rueppell.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with her pleas, the appellant was found guilty of disobeying a lawful order, making false official statements, use of cocaine, and dishonorably failing to pay debts, in violation of Articles 92, 107, 112a, and 134, UCMJ, 10 U.S.C. §§ 892, 907, 912a, 934. The military judge, sitting alone as a special court-martial, sentenced the appellant to a bad-conduct discharge, confinement for 135 days, and reduction to the grade of E-1. The convening authority approved the findings and sentence as adjudged. Pursuant to the military judge's ruling on a defense motion, the appellant was given 11 days of administrative credit against her adjudged confinement; she was also credited with the 14 days she spent in pretrial confinement.

In her sole assignment of error, the appellant asserts that the military judge, having granted 11 days of “additional” pretrial confinement credit, erred in not awarding day-for-day credit for the entire 44 days the appellant spent at the Remotivation Center.

Background

The appellant was assigned to the 37th Security Forces Squadron at Lackland Air Force Base (AFB), Texas, at the time of the offenses. The appellant was living off base with her husband and child, but her husband left and took the child with him. The appellant began to experience difficulties, and was prosecuted by civilian authorities for driving while intoxicated. The appellant failed to appear in court for that offense and lied to her supervisors about that court appearance. The appellant was subsequently moved on base into a dormitory and was referred to a drug and alcohol treatment program. She continued to experience problems within the squadron and was restricted to base by her squadron section commander. On 16 May 2005 the appellant violated that order by leaving the base without permission. She met some civilians in the local area and ended up in an apartment, where she consumed alcohol and cocaine. The appellant was unable to fully remember what happened that evening, but she reported being sexually assaulted. When she returned the next day her unit decided to place her in the Remotivation Center building on Lackland AFB.

The Remotivation Center building housed a correctional custody program for airmen undergoing a last-chance rehabilitation effort. The appellant was not officially enrolled in the program at the Remotivation Center and was not housed with the program participants. At first the appellant was not allowed to have personal items in her room but after she complained she was allowed to have them. She was also allowed to wear her civilian clothes during non-duty hours. The appellant was in the Remotivation Center from 17 May 2005 to 26 May 2005, at which time she was turned over to civilian law enforcement officials who placed her in the local jail for probation violations. When the appellant made bail on 3 June 2005, she was placed back into the Remotivation Center building, where she stayed until 7 July 2005, when she was placed back into her own dormitory. On 29 August 2005 the appellant was found intoxicated in her dorm room. This was a violation of her civilian conditions of release, and she was again apprehended by local authorities and placed in a local jail. When she was released from that jail on 8 September 2005, she was placed in military pretrial confinement for a total of 14 days. That period of pretrial confinement is not at issue in the present case. The appellant spent a total of 44 days in the Remotivation Center building.

At trial the appellant moved for appropriate relief, alleging the time she spent at the Remotivation Center was pretrial restraint tantamount to confinement and was illegal pretrial punishment under Article 13, UCMJ, 10 U.S.C. § 813. The military judge found that the appellant was placed at the Remotivation Center for her own protection, so she could rest and be observed. The appellant was not enrolled in the program and not

subject to the restrictions placed on the participants in the Remotivation program, such as marching to meals and having to request permission to use the bathroom at night. The military judge stated that she found the testimony of the NCOIC of the Remotivation Center to be credible. That testimony established that the appellant was allowed to go the Base Exchange and go outside the building to smoke as long as she had an escort. During the second period of her stay the appellant was allowed to perform her normal military duties during the day. The military judge found that neither the appellant's commander nor any of his subordinates had the intent to punish the appellant by placing her at the Remotivation Center.

The military judge noted, however, that there were unnecessary restrictions placed on the appellant's use of the phone, and there were several days at the beginning of her stay during which the appellant did not have her own personal items at the Remotivation Center. Based on those conditions, the military judge awarded 11 days of pretrial confinement credit for the time the appellant spent at the Remotivation Center.

Analysis

Whether an appellant is entitled to credit for a violation of Article 13 presents a "mixed question of law and fact." *United States v. McCarthy*, 47 M.J. 162, 165 (C.A.A.F. 1997) (quoting *Thompson v. Keohane*, 516 U.S. 99, 113 (1995)). The test is whether there was an intent to punish or stigmatize a person awaiting disciplinary action. *United States v. Phillips*, 42 M.J. 346, 349 (C.A.A.F. 1995). We will not overturn a military judge's findings of fact unless they are clearly erroneous. *United States v. Mosby*, 56 M.J. 309, 310 (C.A.A.F. 2002). We "review *de novo* the ultimate question of whether an appellant is entitled to credit for a violation of Article 13." *Id.*

An accused is entitled to day-for-day credit against confinement for time spent in pretrial restriction where the conditions are tantamount or equivalent to confinement. *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985). We review *de novo* the question of whether the pretrial restrictions were tantamount or equivalent to confinement. *United States v. King*, 58 M.J. 110, 113 (C.A.A.F. 2003). In this regard, we consider the nature and scope of any pretrial restraint, the accused's required duties, and other conditions imposed upon the servicemember. *United States v. Smith*, 20 M.J. 528, 531-32 (A.C.M.R. 1985).

The appellant argues that because the military judge stated the 11 days of "additional" credit she awarded was for "pretrial confinement," her ruling was based on Rule for Courts-Martial (R.C.M.) 305(k), and therefore implies that the military judge found the appellant's restriction to the Remotivation Center was tantamount to confinement. The appellant argues, in essence, that there had to be a finding that the 44 days she spent in the Remotivation Center was pretrial confinement before the military

judge would have a basis on which to award an “additional” 11 days of credit. We disagree.

The military judge did not explicitly state her reasons for providing the 11 days of credit, but in her ruling stated she “generously” awarded additional pretrial confinement credit. The implication from the record is that of the 44 days the appellant spent at the Remotivation Center, the military judge found 11 were tantamount to confinement, based on the days when the appellant had unnecessary restrictions placed on her telephone use and did not have her personal belongings. The military judge was therefore entitled to award day-for-day credit for each of those days which were tantamount to confinement. *Mason*, 19 M.J. 274. There is no requirement that the military judge award any additional credit under R.C.M. 305(k). *United States v. Rendon*, 58 M.J. 221, 224 (C.A.A.F. 2003).

We have carefully reviewed the evidence, arguments by counsel, and the military judge’s findings of fact. We agree with the military judge’s factual findings and hold that they are not clearly erroneous. After reviewing the record before us, and considering the nature and scope of the appellant’s pretrial restriction and the conditions imposed upon her at the Remotivation Center, we hold that, except for the 11 days awarded by the military judge, the appellant’s pretrial restriction was not tantamount or equivalent to confinement. We also hold that the appellant was not illegally punished during the 44-day period in question and is entitled to no additional relief under Article 13, UCMJ.

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, 10 U.S.C. § 866(c); *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