

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

Technical Sergeant LARRIN S. SUZAWA  
United States Air Force

ACM S31437

22 December 2008

Sentence adjudged 28 November 2007 by SPCM convened at Hickam Air Force Base, Hawaii. Military Judge: Gregory Friedland (sitting alone).

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

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Michael A. Burnat.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, and Captain G. Matt Osborn.

Before

BRAND, FRANCIS, and JACKSON  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with the appellant's pleas, a military judge sitting as a special court-martial convicted him of one specification of wrongful use of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.<sup>1</sup> The military judge sentenced the appellant to a bad-conduct discharge, five months confinement, and a reduction to E-1. The convening authority approved the bad-conduct discharge, four months confinement,

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<sup>1</sup> The appellant conditionally pled guilty to one specification of wrongful use of methamphetamine and pled not guilty to a charge of disobeying his commander. Pursuant to the appellant's pre-trial agreement (PTA), the convening authority subsequently dismissed the disobedience charge after arraignment.

and the reduction to E-1.<sup>2</sup> On appeal the appellant asks this Court to disapprove his bad-conduct discharge or, in the alternative, grant appropriate sentencing relief. The basis for his request is that he opines his sentence is inappropriately severe.<sup>3</sup> Finding no prejudicial error, we affirm.

### *Background*

The facts of this case are relatively straightforward. On 16 January 2007, the appellant was helping his friend move into an apartment when the landlord's son approached and offered the appellant a "hit" off of a "methamphetamine pipe." The appellant initially declined but decided to take two "hits" off the pipe after his friend encouraged him to do so. On 17 January 2007, the appellant was randomly selected for a urinalysis.

After acknowledging receipt of his selection for a urinalysis, the appellant advised his command that he could not report for testing because: (1) he had a family emergency and needed to leave to care for his ailing mother; (2) he had been advised by his civilian attorney not to submit to the urinalysis; and (3) that the Air Force Office of Special Investigations (AFOSI) were "out to get him." The appellant failed to report to testing at the required time. Later that day, the appellant's squadron commander received word of the appellant's failure to submit to the urinalysis, and she ordered the appellant to submit to a urinalysis. Later that same day, in compliance with his commander's order, the appellant provided a urine sample.

The next day, the appellant was notified to provide a urine sample for his previous random selection. That same day, in compliance with the notification, the appellant provided a urine sample. Both samples, the command-directed sample and the randomly selected sample, were sent to the Air Force Drug Testing Laboratory and subsequently tested positive for amphetamine and methamphetamine. The randomly selected sample tested positive for d-amphetamine at 1227 ng/mL and d-methamphetamine at 4603 ng/mL. The Department of Defense cutoff level is 100 ng/mL for each.

### *Inappropriately Severe Sentence*

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offense, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular

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<sup>2</sup> Pursuant to the PTA, the convening authority promised not to approve confinement in excess of four months.

<sup>3</sup> This issue is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Dodge*, 59 M.J. 821, 829 (A.F. Ct. Crim. App. 2004), *aff'd in part and rev'd in part on other grounds*, 60 M.J. 368 (C.A.A.F. 2004).

In the case sub judice, use of illegal drugs, albeit a one-time use, is a serious offense which compromises the appellant's standing not only as a non-commissioned officer but also as a military member. Moreover, the appellant negotiated and received the benefit of a pretrial agreement which reduced his maximum confinement exposure from twelve months to four months. Simply put, after carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offense of which the appellant was found guilty, we do not find the appellant's sentence inappropriately severe.

#### *Erroneous Promulgating Order*

Finally, we note that the promulgating order erroneously fails to note that the appellant conditionally pled guilty to Charge II and its specification. Preparation of a corrected court-martial order, properly reflecting the appellant's conditional plea of guilty to Charge II and its specification, is hereby directed. *See United States v. Smith*, 30 M.J. 1022, 1028 (A.F.C.M.R. 1990).

#### *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, 10 U.S.C. § 866(c); *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