

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman JEFFREY A. TALLMAN
United States Air Force

ACM 36050

28 February 2006

Sentence adjudged 18 June 2004 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: W. Thomas Cumbie.

Approved sentence: Dishonorable discharge, confinement for 3 years, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Jin-Hwa L. Frazier, and Major Steven R. Kaufman.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

We have reviewed the record of trial, the appellant's single assignment of error, and the government's response thereto. The appellant asserts his sentence is inappropriately severe. Finding no error, we affirm the findings, but modify the sentence.

Article 66(c), UCMJ, 10 U.S.C. § 866(c), provides that this Court "may affirm . . . the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved." In *Jackson v. Taylor*, 353 U.S. 569, 576-77 (1957), the Supreme Court considered the statute and its legislative history, and concluded it gave the (then) Boards of Review the power to review not only the legality of a sentence, but also whether it was appropriate. Our superior court has

likewise concluded that the Courts of Criminal Appeals have the power to, “in the interests of justice, substantially lessen the rigor of a legal sentence.” *United States v. Lanford*, 20 C.M.R. 87, 94 (C.M.A. 1955); *see also United States v. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002).

We carefully reviewed the facts and circumstances of this case, and all the matters presented in the sentencing phase of the trial. The appellant used cocaine on 15 occasions on and off base. On several of these occasions, the appellant used cocaine in the presence of other military members. Additionally, he sold approximately 3.5 grams of cocaine to another airman for \$180 and kept a sample for himself. These offenses are serious indeed; the adverse impact and disruption to good order and discipline warrant significant punishment. The maximum punishment for the offenses that the appellant pled guilty includes a dishonorable discharge, confinement for 25 years, and reduction to E-1. The approved sentence is within legal limits and no error prejudicial to the appellant’s substantial rights occurred during the sentencing proceedings. Nonetheless, we find that a lesser sentence of a bad-conduct discharge, confinement for two years, and reduction to E-1 should be affirmed.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). However, we affirm only so much of the sentence as includes a bad-conduct discharge, confinement for 2 years, and reduction to E-1. Accordingly, the findings and sentence, as modified, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court