

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman DWAYNE A. TIPPERY
United States Air Force**

ACM 34958

3 July 2002

Sentence adjudged 18 December 2001 by GCM convened at Barksdale Air Force Base, Louisiana. Military Judge: Israel B. Willner.

Approved sentence: Bad-conduct discharge, confinement for 100 days, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Jeffrey A. Vires, and Major Marc A. Jones.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo.

Before

BURD, HEAD, and ROBERTS
Appellate Military Judges

OPINION OF THE COURT

ROBERTS, Judge:

The appellant was convicted, pursuant to his pleas, of wrongfully using methylenedioxymethamphetamine (ecstasy), in violation of Article 112a UCMJ, 10 U.S.C. § 912a. The approved sentence consists of a bad-conduct discharge, confinement for 100 days, forfeiture of all pay and allowances, and reduction to E-1. The case comes to us on the merits, and we find it necessary to modify the findings.

The appellant was charged with, pled guilty to, and was found guilty of using ecstasy “on one or more occasions.” We find no evidence in the record of trial that the appellant used ecstasy more than once. He told the trial judge during the providence inquiry that he “ingested a pill.” The parties also stipulated that the appellant received one pill from his supplier and ingested it. Under these circumstances, the appellant’s plea

to use of ecstasy on one or more occasions is inconsistent with the evidence in the case, and we modify the findings to reflect the appellant's one-time use of ecstasy. Rule for Courts-Martial 910(e). We modify the approved finding of guilty of the Specification of the Charge, except the words "or more."

The approved findings, as modified, and the approved 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. Turner*, 25 M.J. 324, 325 (C.M.A. 1987); *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986). Accordingly, the approved findings, as modified, and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator