

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Cadet SETH S.M. TUATOO
United States Air Force

ACM 35683

8 March 2005

Sentence adjudged 6 August 2003 by GCM convened at United States Air Force Academy, Colorado. Military Judge: James L. Flanary (sitting alone).

Approved sentence: Dismissal and confinement for 90 days.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher.

Before

STONE, GENT, and BILLETT
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

BILLETT, Judge:

The appellant was convicted, in accordance with his plea, of wrongfully using cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A general court-martial comprised of a military judge sentenced the appellant to a dismissal from the service and confinement for a period of 90 days. The adjudged sentence was approved by the convening authority. On appeal, the appellant alleges that his sentence is inappropriately severe.¹ We find no merit in this argument and affirm.

¹ This assignment of error was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

This Court “may affirm only such findings of guilty and 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.” Article 66(c), UCMJ, 10 U.S.C. § 866(c). In order to determine the appropriateness of the sentence, this Court must consider the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all other matters contained in the record of trial. *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982).

The appellant was a third-year cadet at the United States Air Force Academy at the time of his offense. One evening, early in December 2002, the appellant went to a bar, where he had a few drinks, and a stranger offered to sell him a small bag of cocaine for \$40. The appellant agreed and consumed the cocaine immediately thereafter. He participated in a random urinalysis a few days later which resulted in a positive test for cocaine. The appellant asserts that his sentence to a dismissal is inappropriately severe considering his conviction for a single instance of cocaine use and his solid record of performance as a cadet. We find the sentence appropriate given the severity of the offense and all the facts and circumstances established by the record of trial.

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator