UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant CHARLES L. WALTON
United States Air Force

ACM 37664

18 July 2011

Sentence adjudged 25 February 2010 by GCM convened at Joint Base Lewis-McChord, McChord Field, Washington. Military Judge: Don M. Christensen (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, reduction to E-2, and a reprimand.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford and Major Nicholas W. McCue.

Appellate Counsel for the United States: Lieutenant Colonel Linell A. Letendre and Gerald R. Bruce, Esquire.

Before

BRAND, ORR, and WEISS
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

The appellant was tried by a general court-martial composed of a military judge sitting alone and found guilty[1] of one specification of assault consummated by a battery, one specification of sodomy, one specification of adultery, and one specification of maltreatment, in violation of Articles 128, 125, 134, and 93, UCMJ, 10 U.S.C. §§ 928,

[1] Due to an apparent oversight on the part of the military judge, the record of trial does not reflect an entry of pleas by the appellant. The appellate never raised this as an issue at trial or post-trial, and the record makes clear the appellant's intent was to plead not guilty and to litigate all charges and specifications, which is what happened at trial. We find no prejudice to a substantial right of the appellant by this omission.

925, 934, 893.[2] The adjudged and approved sentence consists of a bad-conduct discharge, confinement for 12 months, reduction to the grade of E-2, and a reprimand.[3] On appeal, the appellant alleges that his sentence, which includes a non-suspended bad-conduct discharge, is inappropriately severe.[4] We disagree and affirm.

Sentence Appropriateness

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005). We assess sentence appropriateness by considering the character of the offender, the nature and seriousness of the offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007). We have a great deal of discretion in determining whether a particular sentence is appropriate but we are not authorized to engage in exercises of clemency. *United States v. Nerad*, 69 M.J. 138, 148 (C.A.A.F. 2010), *cert. denied*, 131 S. Ct. 669 (2010); *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). Finally, we "may affirm only . . . the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ, 10 U.S.C. § 866(c).

The appellant argues that, because he was found not guilty of the most serious charges, had more than twelve years of good service, and submitted numerous character statements on his behalf, his sentence to an unsuspended bad-conduct discharge is inappropriately severe. Appellant requests that this Court grant him relief by approving "no more than twelve months confinement, a reduction in grade to E-2, and a suspended bad-conduct discharge." We do not have the authority to grant the specific relief requested, a suspended punitive discharge, as this Court cannot suspend punishment; however, we will review the appropriateness of the sentence, including the bad-conduct discharge. *United States v. Clark*, 16 M.J. 239, 241-42 (C.M.A. 1983).

Although the military judge found the appellant not guilty of the most serious offenses, the nature of the offenses for which he was convicted and their surrounding circumstances constitute serious misconduct carrying a maximum punishment of a dishonorable discharge, seven years and six months of confinement, forfeiture of all pay and allowances, and reduction to the grade of E-1. At the time of the offenses, appellant was a 29 year-old, noncommissioned officer with over twelve years of excellent service, including combat service. The appellant was also married to another Air Force member and the father of two young children. Yet, the appellant decided to prey upon an 18 year-

[2] The appellant was found not guilty of the greater charges of rape and forcible sodomy, as well as not guilty of a specification alleging an indecent act and a second specification of maltreatment.
[3] The convening authority waived the mandatory forfeitures for a period of six months for the benefit of the appellant's wife and children.
[4] This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

old Airman who was new to the Air Force—just out of technical training school. Serving as this Airman's sponsor and supervisor, within days of her arrival on the base the appellant was sending her unwelcome and offensive text messages of a sexual nature. Within little more than a week he was in her dormitory room on base, under the guise of showing her how to iron her uniforms properly, when he committed an assault consummated by a battery, adultery, and an act of oral sodomy with his young subordinate. We find the appellant's misconduct under these circumstances particularly egregious.

We have carefully given individualized consideration to this particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all other matters contained in the record of trial. We hold that the approved sentence, one which includes a bad-conduct discharge, is not inappropriately severe.

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; *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
Clerk of the Court