UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JOSHUA S. WARD
United States Air Force

ACM 36049

26 May 2006

Sentence adjudged 30 June 2004 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: Bruce T. Smith (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 18 months, forfeiture of all pay and allowances for 18 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major James M. Winner, Major Imelda L. Paredes, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Nurit Anderson.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

In a trial by general court-martial, a military judge sitting alone found the appellant guilty, in accordance with his pleas, of absence without leave on two occasions, divers use of cocaine, larceny of $515, and forgery of three checks, in violation of Articles 112a, 86, 121, and 123, 10 U.S.C. §§ 886, 912a, 921, 923. The *adjudged* sentence consisted of a bad-conduct discharge, confinement for 36 months, forfeiture of all pay and allowances for 36 months, and reduction to E-1. In accordance with his pretrial agreement with the appellant, the convening authority *approved* only so much of the sentence as provided for a bad-conduct discharge, confinement for 18 months, forfeiture of all pay and allowances for 18 months, and reduction to E-1.

On appeal, the appellant argues that his *adjudged* confinement is inappropriately severe. However, in exercising our authority under Article 66(c), UCMJ, 10 U.S.C. § 866(c), this Court "may act only with respect to the findings and sentence as *approved* by the convening authority." (Emphasis added). Thus, even though the appellant correctly notes that the military judge adjudged a period of confinement 14 months in excess of what the trial counsel requested, our focus is on the sentence as approved by the convening authority.

Despite the testimony of trial witnesses indicating the appellant had reimbursed the Airman he stole from and other evidence suggesting he had potential and warranted leniency, we find the approved sentence is appropriate. *See United States v. Baker*, 28 M.J. 121, 123 (C.M.A. 1989) (the standard of review for sentence appropriateness is de novo). The appellant's criminal behavior was primarily motivated by his desire to use cocaine. In this regard,

> [w]e take notice of the lengthy history of this Court's acknowledgments of the seriousness of drug crimes . . . and our insistence that the penal hazards are widely known. . . . One who persists despite the explicitly clear warnings, now emphatically declared, does so at his own risk that, as the plague continues, triers of sentence will express the ever increasing disapproval of the community.

United States v. Toro, 34 M.J. 506, 521 (A.F.C.M.R. 1991) (internal citations omitted).

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 findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator