UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman NELSON WILLIAMSON JR.
United States Air Force

ACM S31947

29 January 2013

Sentence adjudged 5 May 2011 by SPCM convened at RAF Mildenhall, United Kingdom. Military Judge: Jefferson B. Brown (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of $978.00 pay per month for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Shane A. McCammon.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Roberto Ramirez; and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and HECKER
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of a military judge convicted the appellant, consistent with his pleas, of disrespect to a superior noncommissioned officer and failure to obey a lawful order, in violation of Articles 91 and 92, UCMJ, 10 U.S.C. §§ 891, 892. The adjudged sentence consisted of a bad-conduct discharge, confinement for 6 months, forfeiture of $978.00 pay per month for 6 months, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged**.** On appeal, the appellant asserts, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), that his sentence is inappropriately severe. Finding no error that materially prejudices the appellant, we affirm.

Background

On 8 March 2011, instead of reporting to work, the appellant went to sick call due to illness. After being seen by a health care provider, he was placed on "quarters" due to his health condition. The health care provider, Major RSB, gave the appellant verbal and written notice that he was to remain in his room on base. The appellant elected to ignore this order that same day and left the base.

Ten days later, the appellant was in a group briefing with the rest of his flight from the Security Forces Squadron. When Staff Sergeant (SSgt) JJB, the appellant's supervisor, asked the flight if they knew why they were in that briefing, the appellant raised his hand and stated, "Because we have sensitive [noncommissioned officers (NCOs)]." He was then removed from the briefing and escorted to an adjacent room for counseling on his misbehavior. While there, he heard SSgt JJB say something along the lines of, "Is this the type of airman you want working downrange," referring to the appellant. Intending for the flight and SSgt JJB to hear him, the appellant yelled, "Man, shut your a** up," or words to that effect.

A few minutes later, the appellant was standing outside his flight chief's office when Technical Sergeant (TSgt) REC, walked up to him to address the situation that had just occurred. TSgt REC was accompanied by SSgt JJB and another NCO. When TSgt REC ordered him to stand at attention, the appellant refused and said, "You're going to need more stripes." Although TSgt REC was not in the appellant's chain of command, he was a supervisor within the squadron who the appellant knew was acting within the execution of his office during this encounter.

For this course of conduct, the appellant pled guilty to violating two lawful orders and to being disrespectful to two superior noncommissioned officers. The appellant contends his sentence to a bad-conduct discharge and six months confinement is inappropriately severe, given the relatively minor offenses he was convicted of and the fact that the trial counsel only argued for two months confinement.

Sentence Appropriateness

In reviewing sentence appropriateness, we "may affirm only such findings of guilty and 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). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the 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. 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). Applying these standards to the present case, we do not find the sentence, which includes a bad-conduct discharge and six months of confinement, is inappropriately severe for the appellant's offenses.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.[*] Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Appellate Paralegal Specialist

[*] Though not raised as an issue on appeal, we note that the overall delay of more than 540 days between the time of docketing and review by this Court is facially unreasonable. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). Having considered the totality of the circumstances and the entire record, we find that the appellate delay in this case was harmless beyond a reasonable doubt. *Id.* at 135-36 (reviewing claims of post-trial and appellate delay using the four-factor analysis found in *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). *See also United States v. Harvey*, 64 M.J. 13, 24 (C.A.A.F. 2006); *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002).