UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman MARTY A. ZIEGELMEYER
United States Air Force

ACM 35787

11 March 2005

Sentence adjudged 16 September 2003 by GCM convened at Eglin Air Force Base, Florida. Military Judge: Harvey A. Kornstein (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 26 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade and Major James M. Winner.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. Lindo.

Before

ORR, MOODY, and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

CONNELLY, Judge:

The appellant pled guilty to one specification of wrongful disposition of military property, one specification of larceny of military property, and six specifications of housebreaking, in violation of Articles 108, 121, and 130, UCMJ, 10 U.S.C. §§ 908, 921, 930. A military judge sitting alone as a general court-martial accepted the appellant's pleas and sentenced him to a bad-conduct discharge, confinement for 3 years, forfeiture of all pay and allowances, and reduction to E-1. Pursuant to a pretrial agreement, the convening authority approved only so much of the adjudged sentence as provided for a

bad-conduct discharge, confinement for 26 months, forfeiture of all pay and allowances, and reduction to E-1.

Background

The appellant was a member of the Security Forces Squadron, assigned to protect the assets on Duke Field and Eglin Air Force Base, Florida. During a period of six months, the appellant and other security forces members broke into supply rooms and stole a large quantity of military property valued in excess of $5,000. Five of the six break-ins occurred while the appellant was on duty, charged with guarding the supply rooms in question. While the appellant retained many of the stolen items, he did wrongfully dispose of more than $1,000 of military property by giving it to a friend in Kentucky.

On appeal, the appellant contends that his sentence is inappropriately severe and disproportionate to the sentences received in closely related cases. This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Discussion

Sentence appropriateness should generally "be judged by 'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)). This court will not engage in sentence comparison with other specific cases "except in those rare instances in which sentence appropriateness can be fairly determined only by reference to disparate sentences adjudged in closely related cases." *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (quoting *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985)).

The appellant submits that other security forces members who accompanied him during the break-ins and thefts were not as severely punished as he was, and he invites us to engage in a sentence comparison analysis. While the sentences of other participants were not as severe as that accorded to the appellant, sentence comparison is not proper in this case because the other cases are not "closely related" to the appellant's case. The appellant was the primary instigator in the break-ins, participated in significantly more break-ins than anyone else, and stole substantially more property than any other individual. These substantial differences distinguish the appellant's case from the cases cited to us by his appellate defense counsel.

The appellant's sentence is also appropriate in light of the appellant's position of trust, his role in the criminal activities, the scope and duration of the crimes, and its impact on his squadron. The appellant's specific military duty was to protect the very

buildings and property that he broke into and stole from while he was on duty. The appellant was not an unwilling participant, but rather a primary actor who encouraged other security forces members to break the law. The appellant's criminal activities extended over six months, involved six separate break-ins and the theft of more than $5,000 in military property. The impact of his criminal activities on his squadron was pronounced. In all, six security forces members were removed from their duties, requiring the remaining members of the squadron, already stressed by 9/11 and Iraq responsibilities, to assume responsibility for their duties.

Conclusion

The findings and approved 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

ANGELA M. BRICE
Clerk of Court