

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Major JOHN W. BALLENTINE, JR.
United States Air Force

ACM 33812 (f rev)

3 April 2002

Sentence adjudged 22 January 1999 by GCM convened at Langley Air Force Base, Virginia. Military Judge: Johnny H. Edwards.

Approved sentence: Dismissal and confinement for 2 years.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, Major Patricia A. McHugh, and Captain Karen L. Hecker.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Captain Matthew J. Mulbarger.

Before

YOUNG, BURD, and PECINOVSKY
Appellate Military Judges

OPINION OF THE COURT
UPON FURTHER REVIEW

PECINOVSKY, Judge:

On 15 August 2001, we affirmed the appellant's findings and sentence following a factual and legal sufficiency review. On 12 March 2002, our superior court set aside our decision and remanded the case for further review consistent with *United States v. Sills*, 56 M.J. 239, 241 (2002).

Upon further review, we again affirm the approved findings and sentence, adopting the rationale of our 15 August 2001 decision. In that decision, although we noted *United States v. Washington*, 54 M.J. 936 (A.F. Ct. Crim. App. 2001), we applied the "beyond a reasonable doubt" standard for factual sufficiency as set forth in *United*

States v. Turner, 25 M.J. 324, 325 (C.M.A. 1987). In fact, we have applied the *Turner* standard in every case, except *United States v. Nazario*, 56 M.J. 572 (A.F. Ct. Crim. App. 2001). The only reason we did not apply the *Turner* standard in that case was to preserve the issue for review by our superior court. *Nazario*, 56 M.J. at 575.

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. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

LAURA L. GREEN
Clerk of Court