UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman ROBERT A. DEERING
United States Air Force

ACM 34511

24 January 2002

Sentence adjudged 7 March 2001 by GCM convened at Kelly Air Force Base, Texas. Military Judge: Israel B. Willner.

Approved sentence: Bad-conduct discharge, confinement for 9 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, and Major Maria A. Fried.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major Cheryl D. Lewis.

Before

SCHLEGEL, ROBERTS, and PECINOVSKY
Appellate Military Judges

OPINION OF THE COURT

ROBERTS, Judge:

The appellant was convicted, pursuant to his pleas, of two specifications of wrongful appropriation and three specifications of housebreaking, in violation of Articles 121 and 130, UCMJ, 10 U.S.C. §§ 921, 930. The approved sentence consists of a bad-conduct discharge, confinement for 9 months, forfeiture of all pay and allowances, and reduction to E-1. The appellant avers on appeal, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), that the approved sentence is inappropriately severe. We disagree and affirm.

Article 66(c), UCMJ, 10 U.S.C. § 866(c) requires that we approve only that part of a sentence that we find "should be approved." We evaluate the sentence by giving

individualized consideration to an appellant, including the nature and seriousness of the offenses and the character of his service. *United States v. Joyner*, 39 M.J. 965, 966 (A.F.C.M.R. 1994) (citing *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988)). The appellant is a dormitory thief who took advantage of the absence of a fellow airman who was deployed to Kuwait. The appellant used a key from a dormitory room to which he had been previously assigned, entered the airman's room and took various items. He also took microwave ovens from other dormitory rooms when they were unoccupied. Under these circumstances, we do not find the appellant's sentence to be inappropriately severe.

We note that trial defense counsel apparently did not have the opportunity to examine the record of trial prior to authentication. *See* Rules for Court-Martial 1103(i)(1)(B). However, it is clear that trial defense counsel used the record of trial to prepare post-trial matters on the appellant's behalf. Furthermore, the appellant suffered no prejudice from his trial defense counsel not being afforded the opportunity to examine the record of trial prior to authentication, and he did not object to the contents of the record. *See* Article 38(c), UCMJ, 10 U.S.C. § 838(c); *United States v. Munoz*, 54 M.J. 917 (A.F. Ct. Crim. App. 2001), *pet. denied*, 55 M.J. 371 (2001).

Finally, as noted by appellate defense counsel, the convening authority's action is dated the day after the court-martial order, and they both have an incorrect social security number for the appellant. We return the record of trial to the Judge Advocate General for correction of these errors. The record of trial does not need to be returned to this Court after the corrections are made.

The findings 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 findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, SSgt, USAF
Chief Court Administrator