UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman SCOTT A. IMONDI
United States Air Force

ACM S30077

14 March 2003

Sentence adjudged 16 November 2001 by SPCM convened at Keesler Air Force Base, Mississippi. Military Judge: Mary M. Boone.

Approved sentence: Bad-conduct discharge, confinement for 3 months, forfeiture of $695.00 pay per month for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Jeffrey A. Vires, and Captain Patrick J. Dolan.

Appellate Counsel for the United States: Lieutenant Colonel Lance B. Sigmon and Captain Nurit Anderson.

Before

BRESLIN, STONE, and EDWARDS
Appellate Military Judges

PER CURIAM:

The appellant was found guilty, in accordance with his pleas, of wrongfully using and possessing marijuana, in violation of Article 112a, UCMJ, 10 U.S.C. 912a. A special court-martial consisting of officers also found the appellant guilty, contrary to his pleas, of wrongfully using cocaine. Article 112a, UCMJ. The sentence adjudged and approved was a bad-conduct discharge, confinement for 3 months, forfeiture of $695.00 pay per month for 3 months, and reduction to E-1.

The appellant was a student in training at Keesler Air Force Base (AFB) at the time of the offenses. When his crimes came to light, authorities removed him from training and assigned him to the Transition Flight. At trial, the appellant alleged that the

conditions in the Transition Flight were tantamount to confinement, and requested 168 days credit against any sentence to confinement. The military judge heard evidence on the motion, entered findings, and denied the request for credit. The appellant now contends the military judge erred, and asks this Court to take appropriate action to reduce the appellant's sentence. We find no error, and affirm.

An accused is entitled to day-for-day credit against confinement for time spent in pretrial restriction where the conditions are "tantamount" or "equivalent" to confinement. *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985) (summary disposition). We review de novo the ultimate legal question of whether the pretrial restrictions were equivalent to confinement. *United States v. King*, 58 M.J. 110 (2003). In this regard, we must consider the nature and scope of any pretrial restraint, the accused's required duties, and other conditions imposed upon the service member. *See generally United States v. Smith*, 20 M.J. 528, 531-32 (A.C.M.R. 1985).

We find the appellant's restriction was not equivalent to confinement. He was restricted to the installation, but was not otherwise physically restrained. He was subject to a curfew and had a specific schedule for duties both within and outside the Transition Flight area. His schedule gave him periods of free time, including a period between 0900 and 1100 each day when he could travel about the base unescorted, provided he advised his supervisors of his destination. He could travel to any part of the base, except that he needed an escort to go into an area set aside for trainees. During the appellant's free time in the evening, he could watch television, lounge in the facility, or make telephone calls. The appellant's duty schedule was less than the normal workday. It sometimes involved fatigue duties, such as clearing vegetation or working on erosion control projects. In those cases, the work was substantive and necessary, and not for the purpose of publicly degrading or humiliating the appellant. Often he performed this physical labor alongside his supervising noncommissioned officer. Sometimes the appellant had less onerous duties, such as helping at the Airmen's Attic, collecting and distributing household goods to military families. The appellant was required to wear his battle dress uniform, unless he was engaging in physical training in the duty area or the gymnasium, however there was nothing added to or removed from the uniform that would make it distinctive in any way. The appellant could socialize with other men and women in the Transition Flight, but was not permitted to contact trainees because of the special concerns regarding discipline in a training environment. In many ways, the appellant's restrictions were less burdensome than those for the trainees at Keesler AFB.

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 (2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

DEIRDRE A. KOKORA
Chief Commissioner