UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class CHAD M. JOHNSON
United States Air Force

ACM 37980

05 February 2013

Sentence adjudged 17 June 2011 by GCM convened at Robins Air Force Base, Georgia. Military Judge: Donald R. Eller, Jr. (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Ja Rai A. Williams.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Brett D. Burton; 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 unlawfully selling military property, in violation of Article 108, UCMJ, 10 U.S.C. § 908. The adjudged sentence consisted of a bad-conduct discharge, confinement for 6 months, and reduction to E-1. The convening authority approved the sentence as adjudged. On appeal, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant contends his sentence is inappropriately severe. Finding no error that materially prejudices the appellant, we affirm.

Sentence Appropriateness

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). In doing so, 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).

After being demoted in rank twice (from Staff Sergeant to Senior Airman) due to a physical fitness test failure and nonjudicial punishment for false official statements, the appellant had financial difficulties. To help solve them, over a four month period, he stole over 29,000 pounds of copper wire and other metal from the 54th Combat Communications Squadron at Robins Air Force Base, Georgia, and sold it to a civilian recycling business. This material was military property, and the appellant knew that the Air Force still had ownership over these materials and had not abandoned them. The appellant typically would return to his squadron on Friday night after all other squadron members had left, load his truck with the metal, and then sell it by the pound to a local civilian recycling business. He did this on 14 occasions, receiving $44,827.48, which he then used for personal expenses. On appeal, as he did at trial, the appellant contends he should not receive a bad-conduct discharge, given his years of service and personal difficulties.

We have given individualized consideration to this particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all other matters contained in the record of trial. We find that the sentence was clearly within the discretion of the convening authority, was appropriate in this case, and was not inappropriately severe.

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.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court