

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
EDWARDS, KAPLAN, and GONZALES
Appellate Military Judges

UNITED STATES, Appellee
v.
Captain FORREST D. LANCHBURY
United States Army, Appellant

ARMY 9601577

1st Armored Division
W. G. Jewell and P. E. Brownback III, Military Judges

For Appellant: Colonel John T. Phelps II, JA; Lieutenant Colonel Michael L. Walters, JA; Major Leslie A. Nepper, JA; Captain Mark A. Bridges, JA (on brief).

For Appellee: Colonel Joseph E. Ross, JA; Lieutenant Colonel Frederic L. Borch III, JA; Major Lyle D. Jentzer, JA; Captain Steven H. Levin, JA (on brief).

19 February 1998

MEMORANDUM OPINION

KAPLAN, Judge:

A military judge sitting as a general court-martial found the appellant guilty, in accordance with his conditional pleas,¹ of wrongful use of controlled substances

¹ By agreement with the government, the appellant preserved for appeal, notwithstanding his guilty pleas, the following issues:

- a. Whether the Military Judge correctly ruled that the statements made by the accused to CW2 John G. Ramiccio on the morning of 22 January 1996 were not protected under the Voluntary Self-Referral provisions of AR 600-85 and, therefore, not entitled to suppression in accordance with the Limited Use Policy of the same regulation?

(continued...)

JALS-CCZ

LANCHBURY - ARMY 9601577

(morphine, Demerol, Dextroamphetamine, Tylenol #3 with codeine, and Valium) and larceny of military property (the same controlled substances), in violation of Articles 112a and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 912a and 921 (1988) [hereinafter UCMJ].² Thereafter, the military judge sentenced the appellant to a dismissal from the service, confinement for six months, and forfeiture of all pay and allowances. He recommended that the dismissal be suspended for a period of three years. The convening authority disapproved all confinement adjudged but otherwise approved the sentence to dismissal and forfeitures.³

This case is before the court for automatic review pursuant to Article 66, UCMJ. We have considered the record of trial, the five assignments of error, the government's reply thereto, and the matter personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). Government counsel concede that one of the appellant's assertions of error is meritorious; we agree and will grant appropriate relief. In his action, the convening authority approved forfeiture of all pay and allowances while simultaneously disapproving all confinement adjudged. This action contravenes the guidance contained in Rule for

(... continued)

b. Whether the Military Judge correctly ruled that the Limited Use Policy of AR 600-85 does not extend to the method of acquisition of the illegal substances used or possessed incidental to personal use by the accused?

² Other charges of dereliction of duty and conduct unbecoming an officer, in violation of Articles 92 and 133, UCMJ, were dismissed by the military judge upon a government motion at the completion of the providence inquiry. We note an obvious typographical error on page 146 of the record of trial, to wit: although the record indicates that the appellant pleaded guilty to the conduct unbecoming an officer charge (Charge IV), the pretrial agreement indicates that the appellant would plead not guilty to that charge. In addition, the military judge did not conduct a providence inquiry concerning that charge, and the trial counsel moved to dismiss that charge, along with the dereliction charge, just prior to entry of findings by the military judge. Finally, the promulgating order indicates that the appellant pleaded not guilty to that charge.

³ We find the appellant's claim (Assignment of Error III) that the convening authority, in his action, disapproved the adjudged dismissal creative but unconvincing.

LANCHBURY - ARMY 9601577

Courts-Martial 1107(d)(2) that a soldier should not be deprived of more than two-thirds pay unless that soldier is in a confinement status. See *United States v. Warner*, 25 M.J. 64, 67 (C.M.A. 1987); *United States v. Harris*, 26 M.J. 729, 734 (A.C.M.R. 1988). We reject the remaining assignments of error and the *Grosteffon* issue as lacking in merit.

Appellant was a career officer, physician, and flight surgeon assigned to an aviation unit deployed in Hungary in support of Operation Joint Endeavor, the peacekeeping operation in Bosnia. As brigade surgeon, he had access to controlled substances issued to his unit for the medical treatment of injured and sick soldiers. Shortly after arriving in Hungary, he began abusing morphine "to relieve stress." He soon became addicted. Over the course of a month, he stole from his unit aid station, and personally used, significant quantities of morphine, Demerol, Detroamphetamine, Tylenol #3, and Valium, all controlled substances that required proper prescriptions before distribution and use. He nearly overdosed on morphine before seeking guidance from a close friend, a warrant officer, on how to deal with his "drug problem." Fortunately for the appellant, his friend encouraged him to seek professional medical treatment for his addiction, which he did. At the time of his trial, the appellant had completed a drug rehabilitation program. Regardless of these positive actions, the dismissal of the appellant, under the circumstances of this case, was clearly appropriate.

The findings of guilty are affirmed. After considering the entire record, the court affirms only so much of the sentence as provides for dismissal and forfeiture of \$2000.00 pay per month for twelve months.

Senior Judge EDWARDS and Judge GONZALES concur.

FOR THE COURT:


JOHN T. RUCKER
Lieutenant Colonel, JA
Clerk of Court