

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
ZOLPER, COOK, and BAIME
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant First Class SEAN P. BRIGHT
United States Army, Appellant

ARMY 20020938

United States Army Transportation Center and Fort Eustis
Ronald W. White, Military Judge
Colonel Howard O. McGillin, Jr., Staff Judge Advocate

For Appellant: Charles W. Gittins, Esquire; Major Fansu Ku, JA; Captain Shay Stanford, JA; Captain Edward G. Bahdi, JA.

For Appellee: Colonel John W. Miller, JA; Major Elizabeth G. Marotta, JA; Major Tami L. Dillahunt, JA; Major W. Todd Kuchenthal, JA; Major Michael Friess, JA; Major Teresa T. Phelps, JA.

29 August 2008

MEMORANDUM OPINION ON FURTHER REVIEW

ZOLPER, Senior Judge:

Appellant was convicted at a general court martial by an officer and enlisted panel, contrary to his pleas, of an attempted violation of a lawful general regulation, a violation of a lawful general regulation (two specifications), maltreatment (two specifications), rape (three specifications), forcible sodomy (two specifications), adultery, and obstructing justice, in violation of the Uniform Code of Military Justice [hereinafter UCMJ], Articles 80, 92, 93, 120, 125, and 134; 10 U.S.C. §§ 880, 892, 893, 920, 925, and 934. Appellant was sentenced to reduction to Private E-1, forfeiture of \$550 pay per month for twelve months, confinement for five years, and a dishonorable discharge. The convening authority approved confinement for four years and eleven months, and otherwise approved the sentence as adjudged.

On 19 December 2006, our court affirmed the findings and sentence. *United States v. Bright*, ARMY 20020938 (Army Ct. Crim. App. 19 Dec. 2006) (unpub.). On 9 June 2008, the CAAF found the evidence legally insufficient to support the

rape convictions and reversed the findings as to those specifications, affirming all other findings, and returning the record of trial to this court to “reassess the sentence or order a rehearing on sentence, as appropriate.” *United States v. Bright*, 66 M.J. 359, 366 (C.A.A.F 2008).

“[I]f the court can determine to its satisfaction that, absent any error, the sentence adjudged would have been of at least a certain severity, [then] a sentence of that severity or less will be free of the prejudicial effects of error” *United States v. Moffeit*, 63 M.J. 40, 41 (C.A.A.F. 2006) (quotation marks and citation omitted); *see also United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986). In curing the errors through reassessment, we must assure that the sentence is “equal to or no greater than a sentence that would have been imposed if there had been no error.” *Id.* (citing *Sales*, 22 M.J. at 308); *see also United States v. Buber*, 62 M.J. 476, 477 (C.A.A.F. 2006). If we can “reliably determine what sentence would have been imposed at the trial level if the error had not occurred,” we need not order a rehearing on the sentence. *Sales*, 22 M.J. at 307.

Under the circumstances of this case, and applying the analysis provided by our superior court in *Moffeit*, we are confident a rehearing is not necessary, as there is ample evidence to reassess the sentence. The maximum possible punishment has not changed and appellant’s remaining offenses (including two specifications of forcible sodomy) and the aggravating circumstances related to the offenses remain largely unaffected. Furthermore, the gravamen of appellant’s misconduct is his repeated abuse of the authority entrusted to him by the United States Army. As a platoon drill sergeant and instructor at Advanced Individual Training (AIT), appellant was placed in a position of trust and responsibility. His role was to exemplify the Army values and instill those values in new Army inductees, many of whom had never been away from home before. On numerous separate occasions, appellant disregarded his duties as platoon sergeant and undermined the entire system by abusing—verbally, physically, and sexually—soldiers entrusted to him.

As our superior court emphasized in *Moffeit*, 63 M.J. at 41, this court has reviewed a substantial number of records involving offenses similar to appellant’s remaining findings of guilt. Therefore, we are thoroughly experienced “with the level of sentences imposed for such offenses under various circumstances.” *Id.* In contrast, appellant’s case differs significantly from that in *Buber*, 62 M.J. at 478, because appellant’s sentencing landscape has *not* changed so dramatically that a rehearing is required. (emphasis added.) In *Buber*, appellant’s only remaining finding of guilt was one specification of false official statement; our superior court dismissed the findings of unpremeditated murder and assault upon a child. *Id.* Clearly, the dismissed offenses constituted the bulk and gravamen of Buber’s misconduct; without them it was not possible for the court to confidently determine what the appropriate sentence might have been. However, in appellant’s case, substantial misconduct remains, to include two separate instances of forcible

sodomy, as well as two specifications of violating a lawful general order, two specifications of maltreatment, one specification of adultery (on divers occasions), and one specification of obstructing justice. With all these charges still before this court, we are secure in our decision to reassess this sentence accurately and appropriately.

We are, therefore, confident the panel members would have imposed and the convening authority would have approved a sentence of a bad-conduct discharge, confinement for two years, forfeiture of \$550.00 pay per month for twelve months, and reduction to Private E-1.

DECISION

Considering the nature of the remaining findings of guilty, the entire record, the sentence adjudged at trial, and applying the principles of *Moffeit*, 63 M.J. at 40, 42-44 and *Sales*, 22 M.J. at 305, to include those principles identified by Judge Baker in his concurring opinion, we are confident with our remedial action in this case. “[W]e perceive no reasonable possibility of benefit to [appellant] by remand of the record . . . for reassessment of the sentence.” *United States v. Sims*, 57 M.J. 419, 422 (C.A.A.F. 2002) (citation omitted). Therefore, we affirm the findings of guilty and only so much of the sentence as provides for a bad-conduct discharge, confinement for two years, forfeiture of \$550.00 pay per month for twelve months, and reduction to Private E-1.

All rights, privileges, and property of which appellant has been deprived by virtue of that portion of his sentence set aside by this decision are ordered restored. *See* Article 58b(c) and 75(a), UCMJ.

Judge COOK and Judge BAIME concur.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.
Clerk of Court