

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MERCK, CASIDA, and TRANT
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant KENNETH W. CAUTHEN
United States Army, Appellant

ARMY 9801025

United States Army Infantry Center and Fort Benning
L. R. Dean and K. H. Hodges, Military Judges

For Appellant: Colonel Adele H. Odegard, JA; Major Kirsten V.C. Brunson, JA;
Captain Donald P. Chisholm, JA (on brief).

For Appellee: Colonel Russell S. Estey, JA; Captain William J. Nelson, JA. (on
brief).

15 February 2000

MEMORANDUM OPINION

Per Curiam:

A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of attempted larceny, conspiracy to steal and wrongfully dispose of military property, and sale of military property without proper authority in violation of Articles 80, 81, and 108, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 881, and 908 [hereinafter UCMJ]. The approved sentence was to a bad-conduct discharge, confinement for three months, and reduction to Private E1. The convening authority directed that the automatic forfeitures required by Article 58b, UCMJ, be waived and paid directly to appellant's children.

Appellant's single assignment of error is without merit. Appellant has raised two matters personally pursuant to *United States v. Grostefon*, 12 M.J 431 (C.M.A. 1982), neither of which have merit, but one of which merits comment. Appellant asserts that he had informed his counsel prior to trial that his personnel records did not reflect some of his medals, yet his counsel took no affirmative action to correct this oversight at trial. Appellant avers that had this been corrected at trial, he likely would have received a lesser sentence.

At arraignment, the military judge specifically asked appellant if he was wearing all awards, medals, decorations, ribbons, and badges to which he was entitled; appellant answered that he was. After findings, the military judge again asked if appellant was wearing all awards, medals, ribbons, decorations, and badges to which he was entitled; appellant's defense counsel answered that he was. After appellant had completed his unsworn statement, and while he was still seated in the witness chair, the military judge stated "While you're here, why don't you turn and let me see your awards and decoration, and let me make sure you're—just flip your jacket back so I can see." The record of trial then reflects a pause while the military judge examined appellant's awards and decorations. Appellant's personnel records that were introduced by the prosecution during the sentencing phase of the trial indicated that appellant had been awarded, inter alia, one Army Achievement Medal (AAM) and one, possibly two, Army Commendation Medals (ARCOM).¹ During his argument on sentencing, appellant's defense counsel asked that the military judge "take into consideration the ribbons that this soldier bears."

In the matters submitted pursuant to Rule for Courts-Martial [hereinafter R.C.M.] 1105, appellant's defense counsel stated that appellant had received three ARCOMs and three AAMs. Attached to the R.C.M. 1105 matters were copies of: an ARCOM certificate for "meritorious service while assigned as a funeral operations specialist during 14 April 1992 to 31 August 1993; an order awarding an ARCOM for meritorious service/achievement during the period 17 January 1991 to 28 February 1991;² and, an AAM for meritorious service during battalion gunnery while serving as a Bradley Fighting Vehicle driver during the period 23 October 1991 to 6 November 1991.

We discern three possible scenarios based on these facts. First, the appellant is entitled to the three ARCOMs and three AAMs and was wearing his full complement of medals at trial (as he stated to the military judge). If so, the military judge was fully aware of his authorized decorations, particularly since the military judge made an extra effort to examine appellant's ribbons while he was on the

¹ Appellant's Personnel Qualification Record (DA Form 2-1) indicated "ARCOM - 01/AAM-1/ARCAM-1/ARCM-2." If we accept that "ARCAM" indicates Army Reserve Components Achievement Medal and "ARCM" indicates an Army Commendation Medal, then appellant had two such commendation medals.

² We note that the orders were issued by a unit within the 1st Infantry Division during the period of hostilities of Operation Desert Storm and, presumably, were for meritorious service during that conflict. During his unsworn statement, appellant described his wartime service.

witness stand. Second, the appellant is entitled to the three ARCOMs and three AAMs, but was not wearing them on his uniform at trial. If so, appellant, inexplicably, misinformed the military judge when he said that he was wearing all of his authorized decorations. Third, appellant is not entitled to the three ARCOMs and three AAMs. The paperwork attached to the R.C.M. 1105 matters only substantiates one AAM and two ARCOMs, which is the same as that reflected in his personnel records admitted at trial. If so, appellant has obviously misled this court in his *Grostefon* allegation.

In any of these scenarios, appellant has failed to meet his burden to establish that his counsel was ineffective under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). We thus reject his *Grostefon* allegation on its face based on the principles enunciated in *United States v. Ginn*, 47 M.J. 236, 248 (1997).

The findings of guilty and the sentence are affirmed.

FOR THE COURT:



JOSEPH A. NEURAUTER
Clerk of Court