UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman JERALD S. BOYKIN
United States Air Force

ACM S30055

19 December 2003

Sentence adjudged 4 October 2001 by SPCM convened at Vandenberg Air Force Base, California. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Major Kyle R. Jacobson.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Tracey L. Printer.

Before

PRATT, MALLOY, and STUCKY
Appellate Military Judges

OPINION OF THE COURT

STUCKY, Judge:

The appellant was convicted, pursuant to his pleas, by a special court-martial consisting of a military judge sitting alone, of two specifications of wrongful use of marijuana and one specification of wrongful introduction of marijuana onto Vandenberg Air Force Base, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. He was acquitted of one specification of sleeping on post while posted as a sentinel, in violation of Article 113, UCMJ, 10 U.S.C. § 913. The appellant was sentenced to a bad-conduct discharge, confinement for 4 months, and reduction to E-1. The convening authority initially deferred imposition of a portion of the automatic or mandatory forfeitures of the appellant's pay, but eventually approved the findings and sentence as adjudged.

On appeal, the appellant asserts one error. He claims that no addendum was prepared to the staff judge advocate's recommendation (SJAR), and that nothing within that document indicates that the convening authority was advised of his obligation under Article 60(c)(2), UCMJ, 10 U.S.C. § 860(c)(2), to consider clemency matters submitted by the appellant. Therefore, he requests that we disapprove the punitive discharge or reduce the sentence in his case. We disagree and affirm the findings and sentence. Article 59(a), UCMJ, 10 U.S.C. § 859(a).

The government admits that no addendum was prepared, but has submitted, pursuant to a proper motion, affidavits from both the convening authority and the staff judge advocate (SJA). While neither recalled the case in detail, both stated under oath that they were certain that the matters had indeed been considered. The SJA stated that his practice "was not to prepare an addendum, but instead verbally advise" the convening authority of his obligations under Article 60(c)(2), UCMJ. The convening authority stated that his standard operating procedure was for the SJA to bring the record of trial, the SJAR, and the matters submitted by the accused to his office. The convening authority then discussed the case with the SJA and reviewed all the documents before making his decision as to the findings and sentence. In this case, each document submitted by the accused as part of his clemency package also bears initials which appear to be those of the convening authority and the date "23 Nov 01," which is the date that the convening authority approved the findings and sentence.

Article 60(c)(2), UCMJ, states that "[a]ction on the sentence of a court-martial shall be taken by the convening authority . . . [and] such action may be taken only after consideration of any matters submitted by the accused," or after the expiration of time for submission of such matters, whichever is earlier. We presume that a convening authority has considered such matters if an addendum to the SJAR has been prepared which (1) tells the convening authority of the matters submitted, (2) advises him that he must consider them before taking action, and (3) lists the documents submitted, indicating that they were provided. *United States v. Foy*, 30 M.J. 664, 665 (A.F.C.M.R. 1990). If an addendum is not prepared, the record must reflect that the convening authority was properly advised of his obligation, and there must be some evidence (such as his initials) that he reviewed the matters submitted. *United States v. Godreau*, 31 M.J. 809, 811-12 (A.F.C.M.R. 1990).

In this case, the affidavits submitted by the convening authority and the SJA, together with the convening authority's initials, convince us that the convening authority was properly advised and that he considered the matters submitted by the appellant. *United States v. Baker*, 54 M.J. 774 (A.F. Ct. Crim. App. 2001), *pet. denied*, 55 M.J. 239 (C.A.A.F. 2001). Therefore, we find the

failure to prepare an addendum did not prejudice the appellant's substantial rights. Article 59(a), UCMJ.

On the basis of the entire record, the approved findings and sentence are correct in law and fact, and no error prejudicial to the appellant's substantial rights occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA SMITH
Documents Examiner