

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class CHRISTOPHER A. BROWN
United States Air Force**

ACM S30178

21 January 2004

Sentence adjudged 8 July 2002 by SPCM convened at Hurlburt Field, Florida. Military Judge: Harvey A. Kornstein (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, forfeiture of \$867.00 pay per month for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Lance B. Sigmon.

Before

STONE, MOODY, and JOHNSON-WRIGHT
Appellate Military Judges

OPINION OF THE COURT

JOHNSON-WRIGHT, Judge:

In accordance with his pleas, the appellant was convicted of failure to go on divers occasions and wrongful use of marijuana on divers occasions, in violation of Articles 86 and 112a, UCMJ, 10 U.S.C. §§ 886, 912a. A military judge, sitting alone, sentenced the appellant to receive a bad-conduct discharge, to be confined for 6 months, to forfeit \$867.00 pay per month for six months, and to be reduced to airman basic. The convening authority approved the adjudged findings, reduced the amount of confinement to 4 months (pursuant to the pretrial agreement), but otherwise approved the sentence. The appellant raises one error for our consideration. The appellee concedes error. We find error and take corrective action.

I. Issue

WHETHER THE APPELLANT'S APPROVED SENTENCE TO FORFEITURE OF \$867.00 PAY PER MONTH FOR SIX MONTHS EXCEEDS THE JURISDICTIONAL LIMIT OF A SPECIAL COURT-MARTIAL.

II. Analysis

The issue of the interpretation of a statute is a question of law subject to de novo review. *United States v. Falk*, 50 M.J. 385, 390 (C.A.A.F. 1999).

“Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except . . . forfeiture of pay exceeding two-thirds pay per month.” Article 19, UCMJ, 10 U.S.C. § 819.

During calendar year 2002, an airman basic with over four months of service was entitled to \$1,105.50 basic pay per month. Due to the appellant's reduction in grade to E-1 adjudged by the court-martial, at the beginning of August 2002, the appellant would have been entitled to \$1,105.50 pay per month; thus, two-thirds forfeiture of the appellant's basic pay was only \$737.00 pay per month, not \$867.00. Although the savvy personnel at Accounting and Finance recognized the error and only deducted \$737.00 pay per month, corrective action is still required. Accordingly, only so much of the sentence as extends to a bad-conduct discharge, confinement for 4 months, forfeiture of \$737.00 pay per month for 6 months, and reduction to E-1 is affirmed.

III. Conclusion

The findings, as approved, and sentence, as modified, are correct in law and fact, and no error prejudicial to the substantial rights of the appellant 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, as approved, and sentence, as modified, are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner