

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic JOEDON CARRILLO
United States Air Force**

ACM S31831

17 August 2011

Sentence adjudged 2 June 2010 by SPCM convened at Tinker Air Force Base, Oklahoma. Military Judge: Dawn R. Eflein (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, and forfeiture of \$500.00 pay per month for 3 months.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford and Captain Robert D. Stuart.

Appellate Counsel for the United States: Colonel Don M. Christensen; Captain Scott C. Jansen; Captain Charles G. Warren; and Gerald R. Bruce, Esquire.

Before

**GREGORY, WEISS, and SARAGOSA
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of one specification of wrongful use of cocaine and one specification of divers wrongful use of marijuana, in violation of Article 112a, UCMJ, 10 U.S.C. §912a. The adjudged and approved sentence consists of a bad-conduct discharge, 3 months of confinement, and forfeiture of \$500.00 per month for 3 months. On appeal, the appellant asks the Court to grant appropriate relief in the form of returning the case for new post-trial processing or setting aside one month of confinement and one month of forfeitures approved in appellant's sentence, pursuant to Article 66(c), UCMJ, 10 U.S.C. §866(c). He opines that the post-trial processing was flawed because the convening authority was not specifically notified in

the Addendum to the Staff Judge Advocate Recommendation that the trial defense counsel had submitted a letter on behalf of the appellant for consideration.

The appellant was assigned to Tinker Air Force Base, Oklahoma, as his first duty station. The court-martial took place on 2 June 2010 and sentence was adjudged on the same date. The appellant was notified orally and in writing as to his post-trial and appellate rights by his trial defense counsel. On 14 June 2010, the staff judge advocate signed the Staff Judge Advocate Recommendation. Attached to the Staff Judge Advocate Recommendation were the AF Form 1359, *Report of Result of Trial*, and the Personal Data Sheet of the appellant. The Record of Trial and Staff Judge Advocate Recommendation were served on both the appellant and his trial defense counsel on 25 June 2010.

On 1 July 2010, the appellant authored a memorandum for "All Reviewing Authorities" entitled, "Waiver of Clemency Submission" expressly waiving his rights to submit clemency matters. In this same document, he acknowledged that, once waived, he knew he could not submit clemency in the future. Subsequent to the appellant's written waiver, the trial defense counsel wrote a memorandum for the special court-martial convening authority entitled, "Petition for Clemency," also dated 1 July 2010. This "Petition for Clemency" memorandum specifically states that "AB Carrillo waives his right to submit clemency on his behalf [sic]. He does not wish to take up anyone's time with his case to include reviewing any clemency submission." However, the memorandum goes on to state, "AB Carrillo understands that you do not owe him anything but he is asking you to show leniency and mercy by granting the relief requested." The memorandum failed to request any specific relief other than requesting that convening authority to "take into consideration all the matters submitted by AB Carrillo in his sentencing package which is attached to the record of trial."

An Addendum to the Staff Judge Advocate Recommendation was prepared for the convening authority on 1 July 2010. The Addendum informed the convening authority that, "the accused has chosen to waive his right to submit clemency matters (Atch 2)." Attachment 2 to the Addendum lists, "Waiver of Clemency Matters, dated 1 July 2010." Neither the body of the Addendum, nor the listed attachment, make it clear whether the defense counsel's memorandum, also dated 1 July 2010, was attached or provided to the convening authority. Furthermore, the 1st Indorsement for the convening authority's signature, indicating that he has considered the attachments prior to taking action on the case is left unsigned. The Government submitted a declaration of the convening authority, Col Robert D. LaBrutta, and an affidavit of the staff judge advocate, Lt Col Heather E.K. LoBue. Both documents state that the trial defense counsel memorandum entitled "Petition for Clemency," dated 1 July 2010, was received by the convening authority and considered prior to taking action on the case.

We review post-trial processing de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)). Prior to taking final action, the convening authority must consider clemency matters submitted by the accused. *United States v. Craig*, 28 M.J. 321, 324-25 (C.M.A. 1989); Rule for Courts-Martial (R.C.M.) 1107(b)(3)(A)(iii). The preferred method of documenting a convening authority's review of clemency submission is completion of an addendum to the staff judge advocate's recommendation. *United States v. Godreau*, 31 M.J. 809, 811 (A.F.C.M.R. 1990). The United States is entitled to enhance the "paper trail" and show that the information in question was indeed transmitted to and considered by the convening authority. *United States v. Blanch*, 29 M.J. 672, 673 (A.F.C.M.R. 1989).

After review of the entire record, the affidavit of the staff judge advocate and the declaration of the convening authority, we believe the action in this case satisfies the requirements of *Craig* and find no prejudice to the appellant. Furthermore, the appellant's written waiver of the right to submit matters under R.C.M. 1105 may not be revoked. R.C.M. 1105(d)(3). Here, trial defense counsel attempted to revive the right to submit matters that the appellant had already waived. Regardless of the waiver, the convening authority nevertheless considered counsel's submission.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "STEVEN LUCAS", is written over a horizontal line.

STEVEN LUCAS
Clerk of the Court