UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman CHARLES L. CRAWFORD
United States Air Force

ACM 35762

14 July 2005

Sentence adjudged 26 August 2003 by GCM convened at Robins Air Force Base, Georgia. Military Judge: Lance B. Sigmon (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Major Jennifer K. Martwick and Captain David P. Bennett.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Major James K. Floyd, and Samantha M. Brock (legal intern).

Before

STONE, ORR, and MOODY
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. On appeal, the appellant requests a new convening authority action. The appellant was convicted, according to his pleas, of one specification of wrongful use of methamphetamine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The general court-martial consisting of a military judge sitting alone sentenced the appellant to a bad-conduct discharge, confinement for 4 months, forfeiture of all pay and allowances, and reduction to E-1. The pleas were entered pursuant to a pretrial agreement (PTA). In that agreement, the convening authority promised not to approve any adjudged forfeitures of pay and allowances and to waive the mandatory forfeitures of pay required under Article 58b, UCMJ, 10 U.S.C. § 858b. The staff judge advocate's recommendation (SJAR) advised the convening authority of the PTA limitation on approving adjudged forfeitures but said nothing about the mandatory forfeitures.

Contrary to the agreement, the convening authority approved the adjudged forfeitures. Consequently, both the SJAR and the action of the convening authority were erroneous. *See United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (plain error for SJAR not to refer to provision in PTA whereby convening authority promises to waive mandatory forfeitures); *United States v. Smith*, 56 M.J. 271, 272 (C.A.A.F. 2002) (an accused is entitled to the benefit of his bargain with the convening authority).

The appellate filings contain copies of the appellant's leave and earnings statements for the months following his conviction. They demonstrate that neither adjudged nor mandatory forfeitures of pay were ever executed. Thus, the government argues that the post-trial errors in this case were harmless.

While the appellant concedes that he experienced no actual forfeiture of pay and allowances, he asserts that a new action "is necessary to avoid any future confusion as to what the convening authority intended." We agree with the appellant. We note that in *United States v. Lajaunie*, 60 M.J. 280 (C.A.A.F. 2004), our superior court directed the convening authority to correct an erroneous action which, in theory, subjected the appellant in that case to possible recoupment. By the same token, the action in this case poses a similar risk if not corrected.

The action of the convening authority is set aside. The record of trial is returned to The Judge Advocate General for remand to the convening authority for new post-trial processing and a new action consistent with this opinion. Thereafter, Article 66(b), UCMJ, 10 U.S.C. § 866(b), will apply.

OFFICIAL

ANGELA M. BRICE
Clerk of Court