UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Captain ANTHONY S. CUNNINGHAM
United States Air Force

ACM 36213

26 May 2006

Sentence adjudged 26 October 2004 by GCM convened at Brooks City-Base, Texas. Military Judge: Dixie A. Morrow (sitting alone).

Approved sentence: Dismissal.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Michelle M. McCluer, Major Nurit Anderson, and Captain Kimani R. Eason.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

The appellant raises two issues before this Court. He first asks that we order new post-trial processing because the record of trial fails to establish the convening authority either received or considered his request for clemency. *See generally* Rule for Courts-Martial (R.C.M.) 1107(b)(3)(A)(iii). Specifically, the appellant complains that the record does not contain an addendum to the staff judge advocate recommendation (SJAR).

The government does not claim an addendum was completed, but argues the staff judge advocate (SJA) complied with R.C.M. 1107. In support of this argument, the government submitted an affidavit from the SJA, who states (1) he personally delivered the appellant's clemency submissions to the convening authority; (2) that he advised her she must review and consider all of the appellant's submissions; and (3) that he observed her as she reviewed the material and read each of the appellant's submissions before

reaching a decision. We further note that the record reveals that every page of the appellant's submissions is initialed (in a handwriting similar to the signature on the final action), a common practice among senior officers who consider clemency matters.

Reviewing the issue de novo, we are confident the convening authority received, reviewed, and considered all of the appellant's post-trial clemency submissions. *See United States v. Godreau*, 31 M.J. 809, 811-12 (A.F.C.M.R. 1990). The appellant is not entitled to new post-trial processing.

We have also considered the appellant's complaint that his sentence to a dismissal is inappropriately severe.[1] Given the nature of the offenses and the extent of his fraudulent representations, a dismissal is an entirely appropriate sentence. *See United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

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, 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

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

[1] This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).