UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ANDREW S. DORNON
United States Air Force

ACM S31144

19 December 2007

Sentence adjudged 16 June 2006 by SPCM convened at Bolling Air Force Base, District of Columbia. Military Judge: Donald A. Plude (sitting alone).

Approved sentence: See opinion.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major John N. Page III, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Ryan N. Hoback.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

OPINION OF THE COURT

SOYBEL, Judge:

In accordance with his pleas the appellant was found guilty of violating a lawful general regulation by wrongfully espousing ideals of white supremacist organizations on his personal web page; failure to obey a lawful order by disobeying a no contact order; wrongfully using marijuana; and communicating a threat in violation of Articles 92, 112a, and 134, UCMJ, 10 U.S.C. §§ 892, 912a, and 934. He was sentenced to a bad-conduct discharge, confinement for 9 months, forfeitures of $849.00 pay per month for 9 months, and reduction to the grade of E-1. The convening authority's action is the subject of the first issue and is discussed below.

The appellant alleges three errors. First, he claims this Court lacks jurisdiction to review his case because the convening authority's action resulted in a sentence below the Court's jurisdictional threshold. Second, he asserts the regulation to which he pled guilty clearly permits the conduct charged in the specification. Third, he claims his plea to the specification alleging he violated a lawful regulation by wrongfully espousing ideals of white supremacist organizations on his personal web page was improvident because there was no evidence presented at trial that he belonged to any such organization. We only address the first issue in this opinion.

The Convening Authority's Action

As part of his clemency submission the appellant asked the convening authority to disapprove the bad-conduct discharge. The convening authority's action read: "only so much of the sentence as provides for confinement for 8 months and 20 days, forfeiture of $849.00 pay per month for 9 months and reduction to airman basic is approved and except for the bad conduct discharge will be executed." The appellant argues that the language in the convening authority's action is clear and unambiguous and the approved sentence, which did not include the bad-conduct discharge, deprives this Court of jurisdiction to review his case.*

We do not agree with the appellant that the language in the action was clear and unambiguous. In *United States v. Wilson*, 65 M.J. 140 (C.A.A.F. 2007), our superior court found that the action was clear and unambiguous when it read "In the case of Hospitalman Sean A. Wilson, U.S. Navy, . . . that part of the sentence extending to confinement in excess of 3 years and 3 months is disapproved. *The remainder of the sentence, with the exception of the Dishonorable Discharge, is approved* and will be executed." *Wilson*, 65 M.J. at 140-41 (emphasis added).

In *Wilson*, the court found that the action clearly and unambiguously did not approve the Dishonorable Discharge. However, the language used in that action differs from the language used in the instant case. In this case, the convening authority did not use "facially clear and unambiguous language that excluded the . . . discharge from approval." *Id.* at 142. As such we find that the action is ambiguous because it neither approves nor disapproves the bad-conduct discharge, yet it orders the execution of the approved portion of the sentence, except the discharge.

Because our jurisdiction to review this case is dependent on the corrected action, we will not address the remaining issues until such time as our jurisdiction to review this case under Article 66, UCMJ, is certain.

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* Article 66, UCMJ, 10 U.S.C. § 866.

Conclusion

The record of trial is returned to The Judge Advocate General for remand to the convening authority for withdrawal of the action and substitution of a corrected one. Rule for Courts-Martial 1107(g). Thereafter, if the bad-conduct discharge is approved, Article 66, UCMJ, 10 U.S.C. § 866, shall apply.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of the Court