UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant BRIAN R. FALLA
United States Air Force

ACM S31115

13 September 2007

Sentence adjudged 6 April 2006 by SPCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Glenn L. Spitzer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jamie L. Mendelson.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of attempting to disobey a lawful order and wrongful use of cocaine on divers occasions in violation of Articles 80 and 112a, UCMJ, 10 U.S.C. §§ 880, 912a. The court-martial sentenced the appellant to a bad-conduct discharge, confinement for 7 months, and reduction to E-1. The convening authority approved the sentence as adjudged and waived a portion of the automatic forfeitures for the support of the appellant's child.

On appeal, the appellant contends that (1) he submitted clemency matters for the convening authority's review but there is no evidence that the convening authority knew of his duty to review the submission or actually considered the submission; and (2) the convening authority's action is ambiguous when it omits "per month" after quantifying the amount of waived forfeitures.

Review of Clemency Matters

The appellant alleges post-trial processing error because there is no evidence in the record that the convening authority reviewed his clemency matters, as required by Rule for Courts-Martial 1107(b)(3)(A)(iii). The Staff Judge Advocate (SJA) did not prepare an addendum to his recommendation as set out in *United States v. Foy*, 30 M.J. 664, 665-66 (A.F.C.M.R. 1990). The appellant has requested relief from this Court in the form of sentence reassessment and has asked that the bad-conduct discharge be disapproved.

The government has responded to the allegation of error by supplementing the record with an affidavit from the convening authority establishing that the convening authority did, in fact, consider all matters submitted as part of the appellant's clemency package prior to taking action. We are satisfied that the convening authority properly reviewed the clemency matters. *See United States v. Godreau*, 31 M.J. 809, 812 (A.F.C.M.R. 1990).

Convening Authority's Action

On 20 April 2006, the appellant asked the convening authority to defer the appellant's reduction in rank and to defer and waive the imposition of automatic forfeitures. On 1 May 2006, the convening authority denied the appellant's request for deferral of reduction in rank and automatic forfeitures, but indicated he would grant the request for waiver of automatic forfeitures in the amount of "$362 pay per month." On 23 May 2006, the convening authority took action in the appellant's case. The portion relevant to the waiver of automatic forfeitures omits the "pay per month" language and states that the amount of $362 of the automatic forfeitures were waived and to be paid for support of the appellant's child.

The appellant contends that the language in the action is ambiguous and does not satisfy the convening authority's true intent. He asks for a corrected action or other appropriate relief. The government concedes that there is an ambiguity in the convening authority's action that warrants an administrative correction. The government proposes the convening authority's action can be corrected by adding the words "per month" into the action following "$362."

We find there is ambiguity in the convening authority's action and are certain that the convening authority intended to waive automatic forfeitures of pay in the amount of $362 per month for the time period indicated in the action. Instead of returning the case for further action by the convening authority we will, in the interests of judicial economy, take corrective action at this level. *United States v. Ruppel*, 45 M.J.

578, 588-89 (A.F. Ct. Crim. App. 1997). We find there is no prejudice to the appellant in doing so.

Conclusion

Preparation of a corrected action and court-martial order, including the words "per month" after the figures "$362" is ordered. In light of this corrective action, the 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

U.S. AIR FORCE COURT OF CRIMINAL APPEALS

STEVEN LUCAS, GS-11, DAF
Clerk of Court