

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman RIKKI K. GLOVER
United States Air Force

ACM 36573

31 May 2007

Sentence adjudged 6 December 2005 by GCM convened at Wright-Patterson Air Force Base, Ohio. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 131 days, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Captain Kimberly A. Quedensley, and Captain John S. Fredland.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Norman G. Printer, and Major Matthew S. Ward.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, in accordance with her pleas, of two specifications of absence without leave,¹ one specification of disobeying a lawful order, one specification of making a false official statement, and one specification of wrongfully using cocaine on divers occasions, in violation of Articles 86, 92, 107 and 112a, UCMJ, 10 U.S.C. §§ 886,

¹ One of these specifications was originally charged as a violation of Article 85 (Desertion), UCMJ, 10 U.S.C. §885; however, the appellant pled guilty to, and was convicted of, the lesser included offense of Absence Without Leave in violation of Article 86, UCMJ, 10 U.S.C. § 886. This specification is the subject of the error asserted in this case.

892, 907, 912a. Her adjudged and approved sentence consists of a bad-conduct discharge, confinement for 131 days, and reduction to the grade of E-1.

The staff judge advocate (SJA) provided the convening authority with a post-trial recommendation (SJAR) under Rule for Courts-Martial (R.C.M.) 1106. Attached to, and referenced in, the SJAR was the Report of Result of Trial (AF 1359). The AF 1359 incorrectly reflected the pleas and findings of the trial court in regard to Charge I and its Specification. The AF 1359 indicated the appellant pled guilty to, and was found guilty of, both Charge I and its Specification, except the words “and with the intent to remain away therefrom permanently”.²

The appellant raises the issue of this “misstatement” in the SJAR and requests that Charge I and its Specification be dismissed. The appellee acknowledges plain error but requests the case be returned for a new SJAR and convening authority action.

The standard of review for determining whether post-trial processing was properly completed is de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (C.A.A.F. 2004). If the SJAR omits any reference to a particular finding, this Court may not presume that the convening authority implicitly approved or disapproved the omitted finding. *United States v. Alexander*, 63 M.J. 269, 275 (C.A.A.F. 2006). This Court must return the case for a new SJAR and convening authority action unless the Court determines the affected finding should be disapproved at the appellate level in the interest of efficient administration of justice. *Id.*

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 post-trial processing consistent with this opinion. Thereafter, Article 66(c), UCMJ, 10 U.S.C. § 866(c), will apply.

OFFICIAL

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator

² In addition to incorrectly citing Article 85 vice Article 86, UCMJ, the AF 1359 failed to note the additional excepted words of “in desertion”.