UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman FELIX A. GONZALEZ
United States Air Force

ACM S31277

21 March 2008

Sentence adjudged 01 December 2006 by SPCM convened at Kirtland Air Force Base, New Mexico. Military Judge: Steven J. Ehlenbeck (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Lieutenant Colonel Maria A. Fried, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, and Captain Roberto Ramirez.

Before

FRANCIS, SOYBEL, and HEIMANN
Appellate Military Judges

SOYBEL, Judge:

The appellant was convicted, in accordance with his pleas, of one specification of attempt, on divers occasions, to steal gas valued at less than $50, one specification of signing a false official record, one specification of negligent destruction of government property, two specifications of assault, and one specification of unlawful entry in violation of Articles 80, 107, 108, 128 and 134 UCMJ, 10 U.S.C. §§ 880, 907, 908, 928 and 934. His approved sentence consists of a bad-conduct discharge, confinement for 5 months, and reduction to the grade of E-1.

On appeal, the appellant alleges error in that the wrong convening authority appointed the pretrial confinement reviewing officer in his case[1]. As such, he claims 10 additional days of pretrial confinement credit should be given. We find this issue to be without merit.

The appellant was put into pretrial confinement (PTC) after his girlfriend was stabbed in the leg during a physical altercation between the two. A pretrial confinement reviewing officer (PCRO) reviewed the appellant's pretrial confinement status and determined his confinement should be continued. The appellant claims the reviewing officer was improperly appointed because the General Court-Martial Convening Authority (GCM) appointed the PCRO rather than the Special Courts-Martial Convening Authority (SPCM).

Rule for Courts-Martial (R.C.M.) 305(i)(2) states that the reviewing officer shall be appointed in accordance with the regulations prescribed by the Secretary concerned. Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, ¶ 3.22 (26 Nov 03) states the Special Courts-Martial Convening Authority appoints a "reasonable number" of PCROs.[2]

Kirtland Air Force Base, New Mexico is a "single base GCM." The Air Base Wing Commander is the GCM while another colonel is the SPCM.

AFI 51-202 is silent as to whether GCMs can also appoint PCROs. The appellant argues that because the PCRO that reviewed his PTC was appointed by the GCM and not the SPCM, the appointment was not made in accordance with service regulations. He now argues he is entitled to 10 extra days of credit for noncompliance with R.C.M. 305(i)(2).

The appellant asserts an interpretation of AFI 51-202 that is too technical and unintended. Article 23(a)(1) of the UCMJ states that special courts-martial can be convened by any person who may convene a GCM. Thus, the appointing official in this case was both a SPCM and a GCM. As such, his appointment of the PCRO was within the intent of the AFI.

Although not raised on appeal we note a problem with the appellant's plea to the specification of Charge III, which alleges damage to a government screen and window. It is clear on the record that the appellant was only responsible for the damage to the window and not the screen. Since there was insufficient evidence to support a finding of guilty as to the screen, we approve the finding of guilty for Charge III and its

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[1] Raised pursuant *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).
[2] The most recent AFI 51-201, which was published on 21 Dec 2007, contains similar language in paragraph 3.2.4.1.

specification except the words " screen and." We have reassessed the sentenced and find it nonetheless appropriate. *United States v. Taylor*, 51 M.J. 390 (C.A.A.F. 1999).

Conclusion

The approved findings, as modified, and sentence, as reassessed, 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 as modified, and sentence, as reassessed are

AFFIRMED.

OFFICIAL

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