

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman BLAKE A. HARKCOM
United States Air Force**

ACM S31904

18 October 2012

Sentence adjudged 16 November 2010 by SPCM convened at Hurlburt Field, Florida. Military Judge: Michael J. Coco.

Approved sentence: Bad-conduct discharge, forfeiture of \$500.00 pay per month for 3 months, reduction to E-1, and a reprimand.

Appellate Counsel for the Appellant: Captain Travis K. Ausland.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; Major Charles G. Warren; Captain Brian C. Mason; and Gerald R. Bruce, Esquire.

Before

STONE, GREGORY, and HARNEY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A special court-martial composed of officer members convicted the appellant, in accordance with his pleas, of one specification of wrongfully using cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a, and sentenced him to a bad-conduct discharge, hard labor without confinement for three months, forfeiture of “\$500.00 of your pay for 3 months,” a reprimand, and reduction to the lowest enlisted grade. The convening authority approved “only so much of the sentence as provides for reduction to the grade of E-1, forfeiture of \$500 pay *per month* for 3 months, a reprimand, and a bad conduct discharge.” (Emphasis added).

A sentence that includes a forfeiture of pay other than a total forfeiture must state the amount to be forfeited in whole dollars per month and the number of months the forfeitures will continue. Rule for Courts-Martial (R.C.M.) 1003(b) (2); *United States v. Johnson*, 32 C.M.R. 127, 128 (C.M.A. 1962). If the duration of the forfeiture is omitted, the dollar amount announced is the total amount to be forfeited. See *United States v. Jones*, 60 M.J. 964, 972 (A.F. Ct. Crim. App. 2005). Here, the convening authority's addition of the words "per month" to the adjudged forfeiture resulted in a forfeiture greater than that announced. Because the announced sentence omitted the duration of the forfeiture, the amount of the forfeiture which may be approved is \$500 pay for one month. We affirm only so much of the sentence as provides for a bad-conduct discharge, forfeiture of \$500 pay for one month, a reprimand, and reduction to the grade of E-1. All rights, privileges, and property, of which the appellant has been deprived by virtue of the execution of forfeitures approved by the convening authority, which have not been affirmed, will be restored.

The approved findings and the sentence, as modified, are correct in law and fact and no error prejudicial to the substantial rights of the appellant occurred.¹ Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

¹ We note that the overall delay of over 18 months between the time the case was docketed at the Air Force Court of Criminal Appeals and completion of review by this Court is facially unreasonable. Because the delay is facially unreasonable, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice. *United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). When we assume error, but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. See *United States v. Allison*, 63 M.J. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case. The post-trial record contains no evidence that the delay has had any negative impact on the appellant. Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt.

Accordingly, the approved findings and the sentence, as modified, are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a horizontal line.

STEVEN LUCAS
Clerk of the Court