

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JONATHAN C. HOSKING
United States Air Force

ACM S30896

29 June 2006

Sentence adjudged 28 April 2005 by SPCM convened at Fort George G. Meade, Maryland. Military Judge: Dawn R. Eflein (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-3.

Appellate Counsel for Appellant: Colonel Nikki A. Hall and Major Sandra K. Whittington.

Appellate Counsel for the United States: Colonel Gary F. Spencer and Lieutenant Colonel Robert V. Combs.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

Pursuant to his pleas, the appellant was convicted of fraudulent enlistment and making a false official statement, in violation of Articles 83 and 107, UCMJ, 10 U.S.C §§ 883 and 907.¹ A special court-martial composed of a military judge sitting alone sentenced him to a bad-conduct discharge, confinement for 4 months, and reduction to E-1. After trial, the appellant requested that the convening authority waive mandatory forfeitures for the benefit of the appellant's spouse, pursuant to Article 58b, UCMJ, 10 U.S.C. § 858b. On 5 May 2005, the convening authority granted the appellant's request.

¹ The appellant also attempted to plead guilty to falsely altering his Department of Defense Form 214, in violation of Article 123, UCMJ, 10 U.S.C § 923. The military judge found the appellant's plea to be improvident as to this specification and entered a finding of not guilty on the appellant's behalf. The government elected to not present evidence on the matter and the military judge subsequently found the appellant not guilty of the Charge and Specification.

On 6 June 2005, the convening authority took action on the appellant's case and approved the findings and only so much of the sentence as provides for a bad-conduct discharge, confinement for 4 months, and reduction to E-3. The convening authority's action did not reflect the waiver of automatic forfeitures, as required by Air Force Instruction 51-201, *Administration of Military Justice*, ¶¶ 9.7.3. and 9.8.4. On appeal, the appellant alleges that the failure to reflect the convening authority's waiver of automatic forfeitures renders the action defective. Appellate government counsel concedes error.

This Court conducts a de novo review of records of trial to ensure post-trial processing has been properly completed. *United States v. Sheffield*, 60 M.J. 591, 592 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)). In reviewing this case, we agree with counsel for both parties that the failure to include the convening authority's waiver of automatic forfeitures in the action renders it defective.

The findings and sentence are approved. The convening authority's action is set aside. Accordingly, we return the record of trial to The Judge Advocate General for remand to the convening authority to withdraw the erroneous action and substitute a corrected action and promulgating order. *See* Rule for Courts-Martial 1107(g). Thereafter, Article 66, UCMJ, 10 U.S.C. § 866, shall apply.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator