

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JUAN J. JARVIS
United States Air Force**

ACM S30226

26 May 2004

Sentence adjudged 11 September 2002 by SPCM convened at Minot Air Force Base, North Dakota. Military Judge: Kurt D. Schuman (sitting alone).

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

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain Diane M. Paskey.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Tracey L Printer.

Before

STONE, MOODY, and JOHNSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's reply thereto. Considering the record as a whole and taking into account the appellate filings, we find that the convening authority received and considered the appellant's clemency submissions. Thus, we hold that he complied with the requirements of Rule for Courts-Martial (R.C.M.) 1107(b)(3) prior to taking action in the case. *See United States v. Crawford*, 34 M.J. 758 (A.F.C.M.R. 1992); *United States v. Godreau*, 31 M.J. 809 (A.F.C.M.R. 1990); *United States v. Gardner*, 29 M.J. 673 (A.F.C.M.R. 1989). As to the remaining issue, the appellant affirmatively waived any errors in the staff judge advocate's recommendation (SJAR). *See Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (waiver is "an intentional relinquishment or abandonment of a known right or privilege"). *See also* R.C.M. 1106(f)(6); *United States v. Barnes*, 3 M.J. 406 (C.M.A. 1977). Even if

not waived, we conclude there was no error as to the characterization of the appellant's service. Additionally, we conclude that any error in the SJAR describing the finding as to the Specification of Charge I did not result in material prejudice to the appellant's substantial rights. Article 59(a), UCMJ, 10 U.S.C. § 859(a).

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner