UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman STEVEN M. LEES II
United States Air Force

ACM S31363

28 October 2008

Sentence adjudged 26 June 2007 by SPCM convened at Hanscom Air Force Base, Massachusetts. Military Judge: Donald A. Plude (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Matthew S. Ward, and Major Donna S. Rueppell.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

PER CURIAM:

Consistent with the appellant's pleas, a military judge sitting as a special court-martial convicted him of one specification of absence without leave, two specifications of willfully disobeying a superior commissioned officer, one specification of making a false official statement, and one specification of use of heroin on divers occasions over a one year period, in violation of Articles 86, 90, 107 and 112a, UCMJ, 10 U.S.C. §§ 886, 890, 907, 912a. The adjudged sentence consists of a bad-conduct discharge, confinement for six months, and reduction to E-1.

The appellant contends he is entitled to a new post-trial processing because the Action signed by the convening authority is undated, and the convening authority failed to comply with his obligation to reduce the confinement period to four months in

accordance with a pretrial agreement. The appellant does not contend that he actually served more than four months of confinement. In response to these assertions, the appellee agrees that a new Action is required. For the reasons set forth below we disagree, but take corrective action, and affirm.

We review post-trial processing issues de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). Prior to taking final action, the convening authority must consider matters submitted by the accused under Rule for Courts-Martial (R.C.M.) 1105. R.C.M. 1107(b)(3)(A)(iii); *United States v. Craig*, 28 M.J. 321, 324-25 (C.M.A. 1989).

On the first claim of error, we note, in our review of the record, that the convening authority initialed and dated both the Staff Judge Advocate's Recommendation and the Addendum to that Recommendation on 17 August 2007. We also note the Addendum properly lists and has attached all of the appellant's clemency submissions. Finally, we note that in the original record, the Action of the convening authority is dated 17 August 2007. Thus, we are satisfied that the convening authority considered the appellant's clemency submissions prior to taking action.

On the second claim of error, we agree that the convening authority erred in failing to approve only so much of the sentence as provides for four months of confinement, the bad-conduct discharge, and the reduction to E-1. Since all participants agreed that he was bound by this obligation and we have no evidence before us to suggest that the appellant actually served more than was required by the obligation, we are satisfied that we can correct the error at this level.

Conclusion

The approved findings 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). However, we affirm only so much of the sentence as includes a bad-conduct discharge, confinement for four months, and reduction to E-1. The findings, as approved, and sentence, as modified, are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court