

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Technical Sergeant ERIC P. MARCUM  
United States Air Force**

**ACM 34216 (f rev)**

**31 March 2006**

Sentence adjudged 2 June 2005 by GCM convened at Offutt Air Force Base, Nebraska. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 53 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, Lieutenant, Colonel Mark R. Strickland, Major Shelly W. Schools, Captain Christopher S. Morgan, and Frank J. Spinner, Esq.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Lance B. Sigmon, and Lieutenant Colonel Jennifer R. Rider.

Before

ORR, JOHNSON, and JACOBSON  
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court for further review because the appellant's original sentence was set aside by the United States Court of Appeals for the Armed Forces (C.A.A.F.). *United States v. Marcum*, 60 M.J. 198 (C.A.A.F. 2004). The appellant was convicted, contrary to his pleas, of dereliction of duty by willfully failing to refrain from providing alcohol to persons under 21 years of age, sodomy, forcible sodomy, assault consummated by a battery, indecent assault, and three specifications of committing indecent acts with another, in violation of Articles 92, 125, 128, and 134, UCMJ, 10

U.S.C. §§ 892, 925, 928, 934. A panel of officer members sentenced him to a dishonorable discharge, confinement for 10 years, forfeiture of all pay and allowances, and reduction to E-1. The convening authority reduced the confinement to 6 years, but otherwise approved the sentence as adjudged, and forwarded the record for review by this Court under Article 66(c), UCMJ, 10 U.S.C. § 866(c).

This Court affirmed the findings and sentence. *United States v. Marcum*, ACM 34216 (A.F. Ct. Crim. App. 25 Jul 2002) (unpub. op.). On 23 August 2004, the C.A.A.F. affirmed the findings, but set aside the appellant's sentence. *Marcum*, 60 M.J. at 198. Our superior court returned the case to The Judge Advocate General and authorized a rehearing on the sentence. The C.A.A.F. held that the appellant's trial defense counsel violated the appellant's attorney-client privilege by submitting a written summary prepared for counsel by the appellant as an unsworn statement during sentencing without the appellant's permission. A sentence rehearing was conducted on 2 June 2005. At the sentence rehearing, the appellant elected to have his sentence determined by a military judge sitting alone. The military judge sentenced the appellant to a dishonorable discharge, confinement for 54 months, forfeiture of all pay and allowances, and reduction to E-1. Pursuant to a pretrial agreement, the convening authority completed a new action approving only so much of the sentence that provided for a dishonorable discharge, confinement for 53 months, forfeiture of all pay and allowances, and reduction to E-1.

The appellant has submitted the record for further review without asserting any additional assignments of error. Our review discloses no substantive error. The approved 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court