

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic BRIAN C. MCKAY
United States Air Force**

ACM 36716

28 November 2006

Sentence adjudged 1 March 2006 by GCM convened at Ramstein Air Base, Germany. Military Judge: Adam Oler.

Approved sentence: Dishonorable discharge, confinement for 4 years and 6 months, and total forfeiture of all pay and allowances for 5 years.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland and Captain Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce.

Before

**BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges**

PER CURIAM:

The appellant, contrary to his pleas, was convicted of rape and indecent acts with another, in violation of Articles 120 and 134, UCMJ, 10 U.S.C §§ 920, 934. A general court-martial composed of officer and enlisted members sentenced him to a dishonorable discharge, confinement for 5 years, and forfeiture of all pay and allowances for 5 years. On 16 April 2006, the convening authority took action on the appellant's case and approved only so much of the sentence as called for a dishonorable discharge, confinement for 4 years and 6 months, and forfeiture of all pay and allowances for 5 years. While the appellant asserts no prejudice as a result of the convening authority's action, because his enlistment will end prior to his confinement term and the dishonorable discharge was approved, he correctly points out that total forfeitures can be adjudged and enforced only for the period of time that an appellant is in confinement. *United States v. Warner*, 25 M.J. 64, 67

(C.M.A. 1987). We therefore modify the convening authority's action accordingly.

The approved findings are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Only so much of the sentence as calls for a dishonorable discharge, 4 years and 6 months of confinement, and forfeiture of all pay and allowances for 4 years and 6 months is approved. 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 findings and the sentence, as modified, are

AFFIRMED.

OFFICIAL

JEFFREY L. NESTER
Clerk of Court