

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Master Sergeant CHARLES M. MCKITRICK
United States Air Force**

ACM 36366

13 June 2006

Sentence adjudged 16 March 2005 by GCM convened at Bolling Air Force Base, District of Columbia. Military Judge: Kevin P. Koehler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland and Major David P. Bennett.

Appellate Counsel for the United States: Colonel Gary F. Spencer.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

Although this case was submitted to us on its merits, we find error in the post-trial processing and conclude it must be reaccomplished because the assistant trial counsel prepared and signed the addendum to the staff judge advocate recommendation (SJAR).¹ *See* Rule for Courts-Martial (R.C.M.) 1106(b). The assistant trial counsel was disqualified from acting as a staff judge advocate (SJA) or legal officer to the convening authority. Because the assistant trial counsel served as a “legal officer,” the acting SJA’s one-sentence indorsement² of her recommendation did not cure the error. *See* Article

¹ It is also worth noting the assistant trial counsel, Captain H, informed the convening authority that “[m]y opinion as contained in the 19 April 2005 Staff Judge Advocate Recommendation remains unchanged.” The SJAR was signed by the deputy staff judge advocate and indorsed by the staff judge advocate, not Captain H.

² “I have reviewed the record of trial and the foregoing recommendation and concur.”

6(c), UCMJ, 10 U.S.C. § 806(c); R.C.M. 1106(b); *United States v. Johnson-Saunders*, 48 M.J. 74 (C.A.A.F. 1998).

The convening authority's action is set aside. The record of trial is returned to The Judge Advocate General for submission to the convening authority for new post-trial processing, including a new SJAR. Thereafter, the record will be returned to this Court for further review under Article 66, UCMJ, 10 U.S.C. § 866.³

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

³ Although we find no error prejudicial to the appellant, we are concerned by a number of deficiencies in documents included in the record of trial (ROT). Prosecution Exhibit 1 is a stipulation of fact that bears the original signatures of the two trial counsel, the military defense counsel, and the appellant, but not the appellant's civilian counsel. Our reading of the transcript leads us to believe the military judge examined a version that included the civilian counsel's signature. The transcript also reflects that a pen and ink change was made to paragraph 8 of the stipulation, presumably corresponding to a change made to the charge sheet regarding the charged time period. In short, Prosecution Exhibit 1, as contained in the original ROT, does not reflect the civilian counsel's signature or the change made to paragraph 8. Second, Appellate Exhibit XVI is the three-page pretrial agreement (PTA). It includes a section for the civilian counsel's signature, but he did not sign the version of the PTA included in the ROT. He must have signed a version, because the judge inquired about it. All other signatories, including the appellant and the convening authority, signed the document on 10 March 2005. The civilian counsel informed the military judge that he signed it later, on 16 March 2005. Appellate Exhibit XVI, as contained in the original ROT, does not reflect the civilian counsel's signature or the date he signed the PTA. Finally, Prosecution Exhibits 5-7 were offered but not admitted into evidence. The Master Index accurately reflects that, but the exhibits are included in the Prosecution Exhibits section of Volume IV and are marked as having been admitted.