UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman MATTHEW R. MORLEY
United States Air Force

ACM S31173

15 August 2007

Sentence adjudged 22 August 2006 by SPCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Charles Wiedie (sitting alone).

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

Appellate Counsel for Appellant: Colonel Nikki A. Hall and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Major Kimani R. Eason, and Captain Daniel J. Breen.

Before

FRANCIS, SOYBEL and BRAND
Appellate Military Judges

PER CURIAM:

A special court-martial composed of a military judge convicted the appellant, consistent with his pleas, of wrongfully using oxycodone and methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The military judge sentenced the appellant to a bad-conduct discharge, confinement for 6 months, and reduction to E-1. The convening authority approved the sentence as adjudged. Additionally, on September 7, 2006, the convening authority deferred mandatory forfeitures from that date until action, and thereafter waived mandatory forfeitures for a period of 6 months or release from confinement whichever was sooner.

The issue raised on appeal is that the action of the convening authority purports to defer and waive mandatory forfeitures concurrently, contrary to the clear intent of the convening authority and the provisions of Articles 57 and 58b, UCMJ, 10 U.S.C. §§ 857, 858b. The appellate government counsel concedes the error.

In the action, dated 27 September 2006, the convening authority stated "all of the mandatory forfeitures were deferred from 7 September 2006 until the date of this action. Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, all of the mandatory forfeitures were waived for a period of 6 months or release from confinement, whichever is sooner, *from 7 September 2006.*" (Emphasis added). It is clear the language emphasized is erroneous.

If an action is ambiguous, it needs to be remanded to the initial convening authority. *United States v. Gosser,* 64 M.J. 93, 96 (C.A.A.F. 2006). The action sub judice is not incomplete, ambiguous, void or inaccurate. The error here is an administrative error, therefore we order corrective action in our concluding paragraph. *See United States v. Ruppel,* 45 M.J. 578, 588 (A.F.C.C.A. 1997).

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). Further, we order the promulgation of a corrected Court-Martial Order, deleting the second occurrence of the words "from 7 September 2006" from the action. Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of Court