

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic JERMOND K. NICHOLS
United States Air Force**

ACM S30263 (f rev)

17 December 2004

Sentence adjudged 31 October 2002 by SPCM convened at Spangdahlem Air Base, Germany. Military Judge: Thomas W. Pittman (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 4 months.

Appellate Counsel for Appellant: Major Andrew S. Williams.

Appellate Counsel for the United States: Colonel LeEllen Coacher.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

On prior review by this Court, this case was returned to the convening authority with instructions that he withdraw an ambiguous action and substitute a corrected action and promulgating order.¹ Rule for Courts-Martial 1107(g). *See United States v. Nichols*, ACM S30263 (A.F. Ct. Crim. App. 24 Oct 2003) (unpub. op.). This was duly accomplished and the case was returned to the Court on 14 October 2004.

¹ The appellant had been sentenced to a bad-conduct discharge and confinement for 5 months, but a pretrial agreement limited to 4 months the amount of confinement the convening authority would approve. The action of the convening authority stated, "only so much of the sentence as provides for four months confinement is approved and, except for the bad conduct discharge, will be executed." This language created an ambiguity as to the convening authority's intent to approve the bad-conduct discharge.

Inasmuch as the requisite 60-day period,² during which the appellant is entitled to submit any assignment of error, has now expired without any filing by the appellant or his appellate counsel, we can now complete our review.

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, 10 U.S.C. § 866(c); *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

² See Courts of Criminal Appeals, Rules of Practice and Procedure, Rule 15(b) (1 May 1996).