

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman ZUSET Y. PERDOMO CONDE
United States Air Force

ACM 35879

26 January 2006

Sentence adjudged 28 January 2004 by GCM convened at Ellsworth Air Force Base, South Dakota. Military Judge: Nancy J. Paul.

Approved sentence: Dishonorable discharge, confinement for 27 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Sandra K. Whittington, and Major Karen L. Hecker.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Carrie E. Wolf.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have reviewed the record of trial, the appellant's assignment of error, and the government's reply thereto. The appellant contends, and the government concedes, that the convening authority's action does not properly reflect the 28 days of extra confinement credit ordered by the military judge. This credit was ordered for periods of time the appellant was housed with convicted prisoners, in violation of the Air Force Instruction which prohibits commingling of pretrial detainees with convicts. Air Force Instruction 31-205, *The Air Force Corrections Systems*, ¶ 5.8.1.2 (7 Apr 2004). Accordingly, we order that the action and promulgating order be corrected to reflect the additional credit. See *United States v. Stanford*, 37 M.J. 388 (C.M.A. 1993); *United States v. Ruppel*, 45 M.J. 578, 588-89 (A.F. Ct. Crim. App. 1997), *aff'd*, 49 M.J. 247 (C.A.A.F. 1998).

Accordingly, we return the record of trial to The Judge Advocate General for remand to the convening authority to withdraw the erroneous action and substitute a corrected action and promulgating order. Thereafter, Article 66(b), UCMJ, 10 U.S.C. § 866(b), will apply.

OFFICIAL

ANGELA M. BRICE
Clerk of Court