UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant ERICA N. PERRY
United States Air Force

ACM 37676 (rem)

06 September 2013

Sentence adjudged 12 March 2010 by GCM convened at Charleston Air Force Base, South Carolina. Military Judge: Terry A. O'Brien (sitting alone).

Approved sentence: No punishment.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford; Major Nicholas W. McCue; Captain Shane A. McCammon; Captain Zaven T. Saroyan; and Frank J. Spinner, Esquire (civilian counsel).

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Naomi N. Porterfield; Major Charles G. Warren; and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and WIEDIE
Appellate Military Judges

OPINION OF THE COURT

UPON REMAND

PER CURIAM:

This case is once again before this court for appellate review. The appellant was initially tried before a military judge sitting alone at a general court-martial on 9-12 March 2010. Contrary to her pleas, she was found guilty of two specifications of making a false official statement and one specification of larceny, in violation of Articles 107 and

121, UCMJ, 10 U.S.C. §§ 907, 921. The appellant was sentenced to be discharged from the Air Force with a bad-conduct discharge, confinement for 18 months, total forfeiture of all pay and allowances, and reduction to E-1.

In an unpublished opinion, we affirmed the appellant's conviction for making false official statements but found the appellant's conviction on the larceny charge was factually insufficient and set aside the corresponding charge and specification. We also set aside the sentence and returned the record to The Judge Advocate General for remand to the convening authority with the instruction that he or she may "order a rehearing to determine an appropriate sentence for the affirmed findings of guilty. If the convening authority determines that a rehearing on the sentence is impracticable, the convening authority may approve a sentence of 'no punishment' or dismiss the charge." *United States v. Perry*, ACM 37676 (A.F. Ct. Crim. App. 3 February 2011) (unpub. op.).

On 7 April 2011, the convening authority approved a sentence of "no punishment" and we affirmed the findings and sentence on 4 August 2011. On 5 January 2012, the Court of Appeals for the Armed Forces set aside our decision and remanded the case for submission to an appropriate convening authority because a staff judge advocate recommendation had not been drafted and the appellant was not given an opportunity to submit matters prior to the convening authority taking action. The convening authority approved a new action on 21 March 2012 and we approved the findings and sentence on 7 December 2012. Our superior court once again set aside our decision on 22 March 2013 due to an ambiguity in the convening authority's action. On 22 May 2013, the convening authority rescinded the 21 March 2012 action and substituted a new action approving "the findings of guilty as to Charge I and the two specifications for which a finding of guilty was adjudged by the trial court."

On appeal, the appellant once again argues that because this Court set aside Charge II and its specification, the "preferral landscape" had so dramatically changed that the "preferral commander's responsibility to dispose of the remaining offenses at the lowest appropriate level under Rule for Courts-Martial 306 was usurped." We previously addressed this issue in our 7 December 2012 opinion and found no merit to the appellant's argument. Because our superior court returned the case only to rectify the ambiguous action, we are not at liberty to reconsider the appellant's assignment of error. *United States v. Riley*, 55 M.J. 185, 188 (C.A.A.F. 2001) (On remand, the Court of Criminal Appeals "can only take action that conforms to the limitations and conditions prescribed by the remand.").

Conclusion

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). Accordingly, the findings and the sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court