

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Master Sergeant RORY L. PIERMATTEI**  
**United States Air Force**

**ACM 35997 (f rev)**

**15 February 2007**

Sentence adjudged 23 June 2006 by GCM convened at McGuire Air Force Base, New Jersey. Military Judge: Nancy J. Paul and Gary M. Jackson.

Approved sentence: Hard labor without confinement for 3 months, forfeiture of \$500.00 pay per month for 2 months, and reduction to E-6.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland, Lieutenant Colonel Andrew S. Williams, Major James M. Winner, Major Sandra K. Whittington, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Major Lane A. Thurgood, and Major Michelle M. McCluer.

Before

**BROWN, MATHEWS, and THOMPSON**  
Appellate Military Judges

**UPON FURTHER REVIEW**

**PER CURIAM:**

This case is before us on its merits for further review. This Court originally found the appellant's plea to Specification 1 of Charge II improvident and set those findings and the sentence aside, and remanded the case to the convening authority for rehearing. *United States v. Piermattei*, ACM 35997 (A.F. Ct. Crim. App. 27 Oct 2005) (unpub. op.). At the rehearing, the appellant was found not guilty of that specification and charge, and on the remaining findings was sentenced by a panel of officer and enlisted members to

hard labor without confinement for 3 months, forfeiture of \$500.00 pay for 2 months, and reduction to the grade of E-6.

Upon reviewing the case we discovered an ambiguity as to the sentence approved by the convening authority in his action. The sentence announced by the president of the court included “forfeit \$500.00 of your pay for 2 months.” This sentence would result in forfeitures totaling \$500.00. The sentence reported in the court-martial order, however, as well as in the staff judge advocate’s recommendation, states “forfeitures of \$500.00 pay *per month* for 2 months.” (Emphasis added.). Such a sentence would result in total forfeitures of \$1000.00. The convening authority’s action only states that the “adjudged sentence” is approved.

It is unclear if the convening authority approved the announced sentence or the sentence reported in the court-martial order. Because the erroneous sentence in the court-martial order is greater than the announced sentence, however, the convening authority could not approve it in his action. Rule for Courts-Martial 1107(d)(1); *see e.g., United States v. Burkett*, 57 M.J. 618, 621 (C.G. Ct. Crim. App. 2002). We resolve any possible ambiguity by approving only so much of the sentence that calls for hard labor without confinement for 3 months, forfeiture of \$500.00 pay, and reduction to the grade of E-6.

Upon further review, the approved findings and the sentence, as modified, 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 the sentence, as modified, are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator