UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman BRUCE G. PITTMAN II
United States Air Force

ACM 36379

30 June 2006

Sentence adjudged 14 June 2005 by GCM convened at Hill Air Force Base, Utah. Military Judge: William A. Kurlander (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Kimberly A. Quedensley.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

BROWN, MOODY, and JACOBSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's answer thereto. The appellant contends that the addendum to the staff judge advocate recommendation (SJAR) contains "new matter" but was never served upon the appellant. The "new matter" the appellant argues is contained in the following paragraph of the addendum:

> Having considered the matters submitted by the defense, my original recommendation remains the same. The sentencing authority, whether military judge or court-martial panel, imposes sentences based on the facts and circumstances of the individual case, including matters in aggravation and in extenuation and mitigation. In this case, a military judge sentenced [the appellant] to be reduced to the grade of E-1, to be confined for seven months, and to be discharged from the service with a bad-conduct

> discharge. I concur with the sentence as adjudged and recommend you approve the adjudged sentence . . .

The appellant contends that these comments are misleading, in that they advise the convening authority to substitute the decision of the military judge for his own. The appellant contends that, had the addendum been served upon him, he "would have had the opportunity to focus the convening authority's attention on the differences between the responsibilities of the military judge and the convening authority as well as the different types of information that could be considered."

We do not agree with the appellant. In the first place, the addendum properly advises the convening authority that he "must consider all written matters submitted by the defense and may consider other matters submitted by the defense prior to taking action on the findings and sentence." Therefore, the convening authority was unlikely to have been misled into basing his clemency decision solely on those matters considered by the military judge prior to imposing sentence. Furthermore, the SJAR advises the convening authority that:

> you have the sole discretion to modify the findings and sentence of this court-martial as a matter of command prerogative. You may approve the findings, in whole or in part, disapprove the findings and order a rehearing, or you may dismiss the charge or any of its specifications. . . . You may, in your sole discretion, approve, change, mitigate or suspend the adjudged sentence in whole or in part. You may disapprove the sentence and order a rehearing. You may not, however, increase the severity of the sentence.

We conclude that the SJAR and addendum are not misleading, nor, viewed as a whole, do they recommend to the convening authority that he not provide "the independent and fresh look by command authorities required by" the Uniform Code of Military Justice. *United States v. Gilbreath*, 57 M.J. 57, 61 (C.A.A.F. 2002). We hold that the appellant is not entitled to new post-trial processing.

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

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator