

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman SAN JIVAN D.S. RAI
United States Air Force**

ACM 37324

24 November 2009

Sentence adjudged 24 July 2008 by GCM convened at Lackland Air Force Base, Texas. Military Judge: William M. Burd.

Approved sentence: Bad-conduct discharge, confinement for 1 year, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Michael A. Burnat, Major Lance J. Wood, and Captain Andrew J. Unsicker.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, and Gerald R. Bruce, Esquire.

Before

BRAND, HELGET, and GREGORY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial convicted the appellant of three specifications of larceny, one specification of dereliction of duty by underage drinking, one specification of absence without leave, and one specification of marijuana use, in violation of Articles 121, 92, 86, and 112a, UCMJ, 10 U.S.C. §§ 921, 892, 886, 912a. A panel of officer members sentenced the appellant to reduction to E-1, forfeiture of all pay and allowances, confinement for one year, and a bad-conduct discharge. The convening authority approved the adjudged sentence. On appeal the appellant identifies an error in the court-martial promulgating order. Specifically, the order erroneously states the amount of the larceny in Specification 3 of Charge I as “of a value of more than \$500 or less.” The

government agrees that the order is incorrect and joins the appellant in requesting that a corrected order be issued that states the value is \$500 or less.

Since the summary of offenses attached to the staff judge advocate's recommendation to the convening authority is correct, the subsequent error in the promulgating order did not prejudice the appellant in the action of the convening authority. Therefore, as both sides agree, the error does not require a new action. *See United States v. Graf*, 35 M.J. 450, 467 (C.M.A. 1992). We do, however, order the promulgation of a corrected court-martial order that accurately reflects the amount of the larceny in Specification 3 of Charge I as "of a value of \$500 or less." The Court also notes that the promulgating order lists William M. Burd as trial counsel when in fact he was the military judge in the case.

Conclusion

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



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal and extends to the right.

STEVEN LUCAS, YA-02, DAF
Clerk of the Court