

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman ERIC S. RAMBEAUT
United States Air Force**

ACM S31755

17 December 2010

Sentence adjudged 12 November 2009 by SPCM convened at Moody Air Force Base, Georgia. Military Judge: Terry O'Brien.

Approved sentence: Bad-conduct discharge, confinement for 3 months, forfeiture of \$933.00 pay per month for 3 months, reprimand, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford, Major Darrin K. Johns, Major Reggie D. Yager, and Major Patrick E. Neighbors.

Appellate Counsel for the United States: Colonel Don M. Christensen and Gerald R. Bruce, Esquire.

Before

**BRAND, ORR, and WEISS
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with the appellant's pleas, a military judge found the appellant guilty of one specification of distribution of a controlled substance, two specifications of wrongful use of a controlled substance, and one specification of possession of a controlled substance with the intent to distribute, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A panel of officers sentenced the appellant to a bad-conduct discharge, three months confinement, a reprimand, reduction to E-1 and forfeitures of "\$933.00 of

your pay for three months.” The convening authority approved the sentence as adjudged.¹ This case is before the Court on its merits.

Background

The appellant, a food service apprentice assigned to Moody Air Force Base, Georgia, began using controlled substances shortly after his spouse asked him for a divorce. After his divorce, the appellant went to Las Vegas, Nevada, to visit Senior Airman (SrA) NM, his new girlfriend, and began socializing with her friends. During his visit the appellant and SrA NM discussed using cocaine and at his request she purchased some cocaine from her neighbor. The appellant ingested at least two lines of cocaine in her presence. He also purchased six tablets that he believed was ecstasy while in Las Vegas and used them upon his return to Georgia. During the month of February 2009, the appellant purchased 15 similar tablets from a civilian friend in Georgia and used some of them in the presence of his civilian friend Jen and AH, another military member. Later that month he sold two of the tablets to AH for \$20.00 each. On 20 March 2009 the appellant met SrA JM, a confidential source working for the Air Force Office of Special Inspections (OSI) at a local bar in Valdosta, Georgia, and told SrA JM of his plans to use ecstasy later that evening. He did in fact ingest a tablet that night. In early April 2009, at the suggestion of an OSI agent, SrA JM called the appellant and asked him whether he was interested in selling ecstasy to her for her and her boyfriend to use. The appellant replied that he was and sold SrA JM three tablets for \$60.00. After she purchased the tablets, SrA JM promptly turned them over to an OSI agent. On 5 June 2009, SrA JM once again asked the appellant whether he could get her some ecstasy. The appellant took the tablets to SrA JM’s workplace but she told the appellant she did not want to purchase the tablets on base. As a result, the appellant agreed to meet her at an off-base restaurant near the base. The appellant sold her two tablets at the restaurant for \$20.00 each. SrA JM gave the tablets to an OSI agent immediately after the sale. Agents from the OSI shipped the tablets to the United States Army Criminal Investigations Lab (USACIL) in Forrest Park, Georgia. A USACIL chemist positively identified the tablets as benzylpiperzine a Schedule I controlled substance.

At trial, the appellant providently pled and was found guilty of the aforementioned charge and specifications.

Erroneous Sentence Announcement

Though not raised as an issue, we note that the president of the court, in announcing the forfeiture portion of the sentence, announced “Senior Airman Eric S. Rambeaut, this court sentences you . . . to forfeit \$933.00 of your pay for three

¹ The appellant and the convening authority entered into a pretrial agreement wherein the appellant agreed to plead guilty to the charges and specifications in return for the convening authority’s promise, inter alia, not to approve confinement in excess of nine months.

months” (Emphasis added.) On 18 December 2009, the convening authority approved the sentence and ordered the sentence, with the exception of the bad-conduct discharge, to be executed. A sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeiture will last. Rule for Courts-Martial 1003(b) (2); *United States v. Gaston*, 62 M.J. 404, 408 (C.A.A.F. 2006); and *United States v. Johnson*, 32 C.M.R. 127, 128 (C.M.A. 1962).

Because the announced amount of forfeitures did not include the words “per month,” we find the announced sentence to be erroneous and that the amount announced shall be the *total amount* to be forfeited. See *United States v. Walker*, 9 M.J. 892 (A.F.C.M.R. 1980) (citing *United States v. Johnson*, 13 U.S.C.M.A. 127, 32 C.M.R. 127 (C.M.A. 1962) and *United States v. Smith*, 43 C.M.R. 660 (A.C.M.R. 1971)); *United States v. Nimmons*, 59 M.J. 550 (N.M. Ct. Crim. App. 2003); and *United States v. Burkett*, 57 M.J. 618, 620-21 (C.G. Ct. Crim. App. 2002).

Conclusion

We affirm the findings and only so much of the sentence as provides for a bad-conduct discharge, three months confinement, reprimand, reduction to the grade of E-1, and forfeitures of \$933.00 pay for one month. All rights, privileges, and property of which the appellant has been deprived by virtue of the execution of forfeitures approved by the convening authority which have not been affirmed will be restored. The findings and sentence, as modified, are correct in law and fact and no error prejudicial to the substantial rights of the appellant occurred.² Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

² We note that the court-martial order (CMO) dated 18 December 2009, incorrectly states that the sentence adjudged by the officer members includes a forfeiture of \$943.00 pay per month for three months. Preparation of a corrected CMO correctly stating the adjudged sentence is hereby directed. See *United States v. Smith*, 30 M.J. 1022, 1028 (A.F.C.M.R. 1990); Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 10.8.2.2 (21 Dec 2007).

Accordingly, the approved findings and sentence, as modified, are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "STEVEN LUCAS", is written over a faint, light blue circular stamp or watermark.

STEVEN LUCAS
Clerk of the Court