

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman DAVID B. RAUSCH
United States Air Force

ACM 36784

28 February 2007

Sentence adjudged 2 May 2006 by GCM convened at Dover Air Force Base, Delaware. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Bad-conduct discharge, a fine of \$3,497.00 with 2 years confinement if the fine is not paid, reduction to E-1, and a reprimand.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland and Major Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce.

Before

BROWN, FRANCIS, and SOYBEL
Appellate Military Judges

PER CURIAM:

This case was submitted to us on its merits for appellate review. The appellant pled guilty to a single Charge and three Specifications alleging he wrongfully used, possessed and distributed psilocin mushrooms, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The appellant's pleas were provident, and we affirm the findings of guilty as to both the Charge and its Specifications.

We note, however, one error requiring corrective action. There was a pretrial agreement (PTA) in this case which contained a single limitation that capped the amount of confinement at 18 months. The military judge, the prosecutors, and the appellant all agreed that this limitation applied not only to any adjudged confinement, but also to any contingent confinement associated with non-payment of the adjudged fine. Since all parties agreed on this interpretation, the convening authority could not approve a more

severe period of contingent confinement. *Tillman v. United States*, 32 M.J. 962, 966 (A.C.M.R. 1991).

However, the convening authority approved the full two years of contingent confinement. In this case though, the fine was paid within the 30-day time limit set by the convening authority in his action, so the contingent confinement clause never became applicable.

Nonetheless, to correct the error and conform the sentence to the PTA, we approve only so much of the sentence that includes the following: a bad-conduct discharge, a fine of \$3,497.00 with confinement for 18 months if the fine is not paid, reduction to the grade of E-1, and a reprimand. Further, we find this sentence to be appropriate for this appellant and his crimes.

The 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 findings and the sentence, as modified, are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

* We note that General Court-Martial Order, No. 71, incorrectly states that the sentence was adjudged on 18 May 2006, vice the correct date of 2 May 2006. Although this error does not prejudice a substantial right of the appellant, we order that a new court-martial order be executed to accurately reflect the correct date the sentence was adjudged.