

**CORRECTED COPY – DESTROY ALL OTHERS**

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

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**UNITED STATES**

**v.**

**Airman First Class DENNIS G. ROYKA  
United States Air Force**

**ACM S30720 (f rev)**

**20 April 2007**

Sentence adjudged 16 June 2004 by SPCM convened at Moody Air Force Base, Georgia. Military Judge: Harvey A. Kornstein (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 113 days, forfeiture of \$795.00 pay per month for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Colonel Raymond J. Hardy, Jr., Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Matthew S. Ward, and Captain Donna S. Rueppell.

Before

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

**UPON FURTHER REVIEW**

**PER CURIAM:**

This case is before us for the second time. When it was first presented, the appellant asserted there was no evidence in the record that the convening authority considered the post-trial clemency matters. We found error and remanded for new post-trial processing and a new action. *United States v. Royka*, ACM S30720, (A.F. Ct. Crim. App. 22 Feb 2006) (unpub. op.). The appellant now asserts there is no evidence that the new staff judge advocate's recommendation (SJAR) was served on the appellant or his trial defense counsel, no evidence that they were provided an opportunity to submit matters to the convening authority, and no statement in the record explaining why the

appellant was not served, as is required in Rule For Courts-Martial (R.C.M.) 1106(f)(1). On 3 April 2007, this Court granted the government's motion to submit documents in support of their answer to the assignment of error. Based on the record as it stands after the admission of those documents, we find no merit to the assignment of error and affirm.

The documents submitted include a new SJAR, dated 27 April 2006, which has attached to it a copy of the report of result of trial, a personal data sheet on the appellant, and the appellant's request for clemency, dated 15 July 2004, which he had submitted as part of his original clemency package. Also included in the documents the government submitted is a new petition for clemency from the area defense counsel, Captain (Capt) J, dated 9 June 2006. This new petition also had attached to it the appellant's prior clemency request, as well as the appellant's written unsworn statement, and five character statements the appellant had provided at his court-martial. The government also submitted an addendum to the SJAR, which is undated, but includes as an attachment Capt J's 9 June 2006 petition for clemency.

Finally, the government also submitted an affidavit from Staff Sergeant B, a paralegal who attempted to serve the SJAR on the appellant. She states she mailed the documents to the address provided by the appellant on his appellate leave form, but the documents were returned with an undeliverable stamp from the postal service. She attempted to locate an address for the appellant through the area defense counsel's office, and through an online "people search" service, but these efforts were unsuccessful.

Based on the documents submitted by the government, we conclude that post-trial processing is now in compliance with R.C.M. 1106(f)(1), and that the appellant has suffered no prejudice.

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