

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Technical Sergeant JOHN T. SCHEPPER
United States Air Force**

ACM 35416

30 December 2004

Sentence adjudged 16 August 2002 by GCM convened at Osan Air Base, Republic of Korea. Military Judge: David F. Brash.

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

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Antony B. Kolenc, Major Rachel E. VanLandingham, and Captain Diane M. Paskey.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Kevin P. Stiens.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of errors, and the government's reply thereto. We find that the Specification meets the requirements found in Rule for Courts-Martial (R.C.M) 307(c)(3) for determining whether a specification states an offense. The Specification alleges every element expressly or by implication so as to give the appellant notice and protect him against double jeopardy. *See also United States v. Dear*, 40 M.J. 196, 197 (C.M.A. 1994).

Considering the evidence in the light most favorable to the prosecution, we find that a reasonable factfinder could have found all essential elements of the offense of solicitation to commit murder beyond a reasonable doubt. *United States v. Turner*, 25

M.J. 324 (C.M.A. 1987) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Furthermore, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

Finally, the appellant next asserts the convening authority improperly approved forfeiture of all pay and allowances when the appellant's sentence did not include confinement. The government concedes that the convening authority's action in approving the adjudged sentence is erroneous. We agree. Because the appellant's sentence did not include confinement, the convening authority was required to reduce the forfeitures to "not more than two-thirds pay per month to run for a specified period of time or up until the punitive discharge is executed." Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 9.8.1 (26 Nov 2003). See also R.C.M. 1107(d)(2), Discussion ("When an accused is not serving confinement, the accused should not be deprived of more than two-thirds pay for any month as a result of one or more sentences by court-martial . . . unless requested by the accused"). Accordingly, we approve only so much of the sentence as provides for a bad-conduct discharge, forfeiture of \$737.00 pay per month to run until the punitive discharge is executed, and reduction to the grade of E-1.

The findings and sentence, as modified by this Court, 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, as modified, are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner