UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class SAMANTHA L. SMITH
United States Air Force

ACM 34682

23 April 2002

Sentence adjudged 1 June 2001 by GCM convened at Hurlburt Field, Florida. Military Judge: James L. Flanary.

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, and Captain Shelly W. Schools.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Lori M. Jemison (legal intern).

Before

SCHLEGEL, ROBERTS, and PECINOVSKY
Appellate Military Judges

OPINION OF THE COURT

ROBERTS, Judge:

The appellant was convicted, pursuant to her pleas, of wrongfully using cocaine, and absenting herself from her unit until apprehended, in violation of Articles 112a and 86, UCMJ, 10 U.S.C. §§ 912a, 886. The approved sentence includes a bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1. The appellant avers on appeal that the approved forfeitures exceed the maximum allowable two-thirds forfeiture because she had been released from confinement and placed on appellate leave before the convening authority took final action. We affirm.

The appellant was sentenced on 1 June 2001. She was placed on appellate leave on 23 July 2001, but the convening authority did not take final action until 27 August

2001. Consequently, he approved the forfeiture of all pay and allowances after the appellant had been released from confinement. Military members may not be subjected to forfeiture of more than two-thirds pay per month when not in confinement. *United States v. Craze*, ACM 34500 (A.F. Ct. Crim. App. 5 Mar 2002) (citing *United States v. Warner*, 25 M.J. 64, 67 (C.M.A. 1987)); Rule for Court-Martial (R.C.M.) 1107(d)(2), Discussion. Whether this rule applies to someone who was actually sentenced to confinement is an open question. *Warner*, 25 M.J. at 66 n.2.

The appellant made no showing that she was subjected to forfeiture of all her pay and allowances after she was released from confinement.

> We may not hold a sentence "incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the [appellant]." Without a showing that [she] did not receive the pay to which [she] was entitled, the appellant cannot convince us that [her] substantial rights were prejudiced.

Craze, slip op. at 2; Article 59(a), UCMJ, 10 U.S.C. § 859(a).

Even if the appellant had established the applicability of R.C.M. 1107(d)(2), and had shown that she forfeited all pay and allowances after her release from confinement, she still would not be entitled to the relief she seeks—disapproval of all forfeitures in excess of forfeiture of two-thirds pay per month for 6 months. The convening authority could have approved forfeiture of all pay and allowances from the date the sentence was announced until the date the appellant was released from confinement, and forfeiture of two-thirds pay per month from the date of her release until her discharge was executed. *Warner*, 25 M.J. at 67. Finally, we remind trial practitioners that, unless total forfeitures are adjudged, the *Manual for Courts-Martial* requires that the sentence *adjudged* by a court-martial "shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last." R.C.M. 1003(b)(2).

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; *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

LAURA L. GREEN
Clerk of Court