

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman MICHAEL J. SONEGO
United States Air Force**

ACM S30216

28 April 2004

Sentence adjudged 21 August 2002 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Israel B. Willner.

Approved sentence: Bad-conduct discharge and forfeiture of \$500.00 pay per month for 12 months.

Appellate Counsel for Appellant: Major Terry L. McElyea and Major Antony B. Kolenc.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Shannon J. Kennedy.

Before

STONE, MOODY, and JOHNSON-WRIGHT
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, including the one submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and the government's reply thereto. As to the first issue, the panel members were asked in voir dire whether any of them had an inelastic predisposition toward the imposition of a particular punishment and whether they could keep open minds as to the entire range of punishment until deliberation and voting. The appellant's post-trial filings, consisting principally of a conclusory affidavit by trial defense counsel, have failed to demonstrate that in responding to voir dire, as he did, the member in question "failed to answer honestly." *United States v. Humpherys*, 57 M.J. 83, 96 (C.A.A.F. 2002). Therefore, we hold that the appellant is not entitled to a rehearing on sentence.

As to the second issue, we conclude that delivery of a Department of Defense (DD) Form 214 did not sever the appellant's status as an active duty member. The form was delivered in error and the appellant has neither received a final accounting of pay nor undergone other required "clearing." *United States v. King*, 27 M.J. 327, 329 (C.M.A. 1989). Therefore, he remains subject to the Uniform Code of Military Justice pending final action on his case.

The 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

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator