UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class CHRISTOPHER M. SPADACCINO
United States Air Force

ACM 34526

4 February 2002

Sentence adjudged 9 March 2001 by GCM convened at Moody Air Force Base, Georgia. Military Judge: Mary M. Boone.

Approved sentence: Bad-conduct discharge, forfeiture of $871.00 pay per month and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Beverly B. Knott and Major Maria A. Fried

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major John D. Douglas.

Before

BURD, ROBERTS, and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

CONNELLY, Judge:

In accordance with his pleas, the appellant was convicted of one specification of wrongful distribution of ecstasy and one specification of wrongful use of ecstasy, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Members sentenced him to a bad-conduct discharge, reduction to E-1, and forfeiture of all pay and allowances. The convening authority modified the forfeitures to $871.00 pay per month and approved the remaining portion of the sentence.

The appellant contends that his defense counsel was denied an opportunity to examine the record of trial prior to authentication and the military judge abused her discretion when she denied a defense request to redact a portion of appellant's statement

that suggested the appropriateness of a bad-conduct discharge. The second issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 432 (C.M.A. 1982). Both errors are without merit. Trial defense counsel's declaration, made a part of the record by our grant of the appellee's motion to submit documents, shows he reviewed the record of trial and provided corrections prior to the military judge's authentication. As for the second error, we believe the military judge was correct when she ruled the appellant's statement did not concede a bad-conduct discharge, but only indicated the appellant realized the severity of his offense. In addition, the extensive sentencing presentation by the appellant at trial could leave court members with only one impression—that the appellant wanted to remain on active duty.

Our review does disclose one matter that requires correction. The convening authority approved "forfeiture of $871.00 pay per month." There are two errors in this statement: (1) There is no statement of the number of months the forfeiture is to run, and (2) The dollar amount is in excess of the 2/3 limit when no confinement is part of the sentence. *See* Rule for Courts-Martial 1003(b)(2) and 1107 (d)(2), Discussion.

The second issue is addressed in the addendum to the staff judge advocate's recommendation. In his addendum, the staff judge advocate (SJA) recognized that, because the accused did not receive a sentence to confinement, he could not forfeit more than two-thirds pay per month for a number of months, or until the punitive discharge is executed. However, the addendum incorrectly states two-thirds forfeiture as $643 pay per month. For reasons unknown, in his second addendum, the SJA did not discuss this issue, and instead recommended approval of the adjudged sentence. In light of these circumstances, we affirm only so much of the sentence as provides for a bad-conduct discharge, forfeiture of $695 pay per month for 1 month, and reduction to E-1.

The approved findings and the sentence, as modified, are correct in law and fact. Article 66 (c), UCMJ, 10 USC § 866(c); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence as modified, are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, SSgt, USAF
Chief Court Administrator