

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class MICHAEL D. STEWART
United States Air Force**

ACM 35188

28 January 2005

Sentence adjudged 13 October 2001 by GCM convened at Edwards Air Force Base, California. Military Judge: Jack L. Anderson.

Approved sentence: Confinement for 15 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Patricia A. McHugh, and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Major John D. Douglas, and Captain Nurit Anderson.

Before

MALLOY, JOHNSON, and GRANT
Appellate Military Judges

PER CURIAM:

We have carefully reviewed the record of trial, the appellant's single assignment of error, and the government's response. The appellant asserts that forfeitures were improperly imposed on the appellant's pay and allowances after he was released from confinement and returned to duty. We disagree and affirm.

It was appropriate for the convening authority to approve total forfeitures when taking action on the findings and sentence, as confinement had been adjudged and the appellant was in confinement at the time of the convening authority's action. Rule for Courts-Martial (R.C.M.) 1107(d)(2), Discussion; *United States v. Warner*, 25 M.J. 64 (C.M.A. 1987). After the appellant was released from confinement, his total forfeitures were terminated and forfeitures of two-thirds pay were taken. This is reflected in the appellant's pay records attached to the appellant's brief. A review of those records does

not reveal excessive forfeitures.¹ Finally, all uncollected forfeitures were remitted when the convening authority took subsequent action on the sentence. Consequently, we hold forfeitures were properly imposed on the appellant's pay after he was released from confinement.² R.C.M. 1107(d)(2), Discussion; R.C.M. 1003(b)(2) and its Discussion; *United States v. Darby*, 27 M.J. 761 (A.F.C.M.R. 1988).

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

ANGELA M. BRICE
Clerk of Court

¹ Total forfeitures were withheld for the month the appellant was released from confinement. Total forfeitures were also withheld for the following four months when forfeitures of no more than two-thirds pay should have been withheld. However, on the fifth month, all the excess forfeitures were returned to the appellant. From the sixth month forward, the appropriate two-thirds forfeitures were withheld.

² Although we do not find error, we are troubled that the current *Manual for Courts-Martial* provision does not afford the court members an unambiguous mechanism to reflect how long total forfeitures should last and whether forfeitures are to run with confinement and then terminate, or continue for a certain period of time after the appellant has served confinement. This information would be critical in determining the intent of the members in sentencing the appellant to a specific period of confinement and an indeterminate period of total forfeitures as currently allowed by the *Manual*. See R.C.M.1003(b)(2). Here, for example, it would be logical to assume that the members intended for the appellant to forfeit all pay and allowances while confined but not after. We recommend that the Joint Service Committee on Military Justice address the matter.