

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman CHARLES T. E. STIRTMIRE
United States Air Force**

ACM 36045

27 January 2006

Sentence adjudged 3 June 2004 by GCM convened at Nellis Air Force Base, Nevada. Military Judge: Glenn L. Spitzer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Sandra K. Whittington, Major James M. Winner, Major L. Martin Powell, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Amy E. Hutchinson, and Jesse Coleman (legal intern).

Before

**BROWN, MOODY, and FINCHER
Appellate Military Judges**

PER CURIAM:

The appellant pled guilty to one specification of absence without leave, one specification of escaping from pretrial confinement, and one specification each of wrongful uses of marijuana, cocaine, and methamphetamine on divers occasions, in violation of Articles 86, 95, and 112a, UCMJ, 10 U.S.C. §§ 886, 895, 912a. The military judge sentenced the appellant to a bad-conduct discharge, confinement for 14 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved confinement for 12 months, but otherwise approved the sentence as adjudged.

The appellant has submitted three assignments of error: (1) The judge advocate who prepared the staff judge advocate's recommendation (SJAR) was disqualified

because she had served as the trial counsel in the case; (2) The appellant's pleas were improvident because the military judge erroneously calculated the maximum sentence to confinement; and (3) The SJAR repeated this erroneous calculation of the maximum possible sentence. Finding error as to the first and third assignments of error, we order relief in the form of new post-trial processing.

The government concedes the following: The trial counsel drafted and signed the SJAR (with a signed concurrence by the staff judge advocate), in violation of Rule for Courts-Martial (R.C.M.) 1106(b); the military judge and all parties to the trial calculated the maximum confinement as being 16 years and 6 months, whereas in reality the maximum confinement was 13 years and 6 months; new post-trial processing is required. We agree. Therefore, we direct that the appellant be afforded new post-trial processing, which includes a SJAR that does not violate R.C.M. 1106(b) and which provides the convening authority with correct advice as to the maximum sentence that was possible at trial. *See United States v. Johnson-Saunders*, 48 M.J. 74, 75 (C.A.A.F. 1998); *see generally United States v. Jones*, 36 M.J. 438, 439 (C.M.A. 1993). We will address the appellant's second assignment of error after the case is returned to us, following new post-trial processing.

The action of the convening authority is set aside. The record of trial is returned to The Judge Advocate General for remand to the convening authority for post-trial processing consistent with this opinion. Thereafter, Article 66(b), UCMJ, 10 U.S.C. § 866(b), will apply.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator