UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JUSTIN K. M. THOMPSON
United States Air Force

ACM S30872

31 March 2006

Sentence adjudged 22 March 2005 by SPCM convened at Hickam Air Force Base, Hawaii. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland, Major Patrick E. Neighbors, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

The appellant, in accordance with his pleas, was convicted of using marijuana while on duty as a sentinel and possession of marijuana, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A special court-martial composed of a military judge sitting alone sentenced him to a bad-conduct discharge, confinement for 6 months, and reduction to E-1. The convening authority approved the adjudged findings and sentence. On appeal, the appellant asserts no errors, but we note that the staff judge advocate's recommendation (SJAR) failed to advise the convening authority in regard to the appellant's pretrial agreement (PTA), as is required by Rule for Courts-Martial (R.C.M.) 1106(d)(3)(E). Finding error but no prejudice, we affirm the findings and sentence.

The SJAR advised the convening authority that the maximum imposable sentence the appellant faced was the jurisdictional limit of a special court-martial. Prior to the

court-martial, however, the appellant entered into a PTA with the convening authority that limited confinement to no more than 10 months. Even though the appellant's adjudged sentence was less than the PTA's sentence limitation, R.C.M. 1106(d)(3)(E) clearly states that the SJAR must contain information regarding "any action the convening authority is obligated to take under the agreement or a statement of the reasons why the convening authority is not obligated to take specific action under the agreement." The appellant did not submit clemency matters, nor did he comment on the SJAR after it was served on him.

We conclude the error in the SJAR was plain and obvious, but find that there has been no colorable showing of prejudice. *See United States v. Lee*, 52 M.J. 51, 53 (C.A.A.F. 1999); *United States v. Wheelus*, 49 M.J. 283, 289 (C.A.A.F. 1998). First, the convening authority who acted on the findings and sentence was well acquainted with the PTA because he signed it, and because the Air Force Form 1359, Report of Result of Trial, attached to the SJAR stated the 10 month confinement limitation pursuant to the PTA. Second, the SJAR advised the convening authority to approve the adjudged sentence, which was less than the maximum allowable sentence under the PTA. Finally, the SJAR was properly served on the appellant prior to the appellant's waiver of his right to submit clemency matters. Therefore, in accordance with R.C.M 1106(f)(6), the appellant waived his right to claim error in the SJAR.

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