

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class MARIA J. TOSCO
United States Air Force**

ACM S31035

31 May 2007

Sentence adjudged 17 November 2005 by SPCM convened at Malmstrom Air Force Base, Montana. Military Judge: James B. Roan (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 75 days, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Major Nurit Anderson, and Captain Donna S. Rueppell.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

PER CURIAM:

The appellant was convicted, contrary to her plea, of one specification of larceny on divers occasions, in violation of Article 121, UCMJ, 10 U.S.C. § 921. Her approved sentence consists of a bad-conduct discharge, confinement for 75 days, and reduction to the grade of E-1.

The staff judge advocate (SJA) prepared a recommendation for the convening authority wherein he informed the convening authority the military judge recommended approval of the appellant's enrollment into the Return to Duty Program (RTDP). The SJA recommended against the enrollment. The appellant

submitted a lengthy clemency package requesting enrollment in the RTDP. There was no legal error raised by the appellant in her post-trial submissions. The SJA prepared a very short addendum to the original staff judge advocate recommendation (SJAR) informing the convening authority that he must consider the matters submitted by the appellant and he specifically listed those submissions. The SJA did not readdress the appellant's request for enrollment in the RTDP nor did he inform the convening authority of his options with regard to the RTDP. On appeal, the appellant alleges the SJA erred when he failed to mention or address the appellant's clemency request for enrollment into the RTDP.

We review post-trial processing issues de novo. *United States v. Bakcsi*, 64 M.J. 544, (A.F. Ct. Crim. App. 2006) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). When the defense submits matters for the convening authority's consideration, the SJA should prepare an addendum to the SJAR that attaches the matters submitted by the defense and advises the convening authority of his obligation to consider those matters before taking action. *United States v. Foy*, 30 M.J. 664, 665-66 (A.F.C.M.R. 1990). If there are no legal errors alleged in the defense matters, no further comment is required in the addendum. *Foy*, 30 M.J. at 666. More to the point, the SJAR does not have to address a request by the appellant for enrollment in the RTDP. See *United States v. Mulray*, ACM S30410 (A.F. Ct. Crim. App. 28 March 2005) (unpub. op.); *United States v. Spencer*, ACM S30204 (A.F. Ct. Crim. App. 6 April 2004) (unpub. op.).

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 findings and sentence are

AFFIRMED.

OFFICIAL

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator