

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman First Class RONALD W. WENSLEY  
United States Air Force**

**ACM 35116**

**24 December 2003**

Sentence adjudged 17 January 2002 by GCM convened at Tinker Air Force Base, Oklahoma. Military Judge: Patrick M. Rosenow (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 19 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Major Patricia A. McHugh and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Matthew J. Mulbarger.

Before

**BRESLIN, ORR, and GENT**  
Appellate Military Judges

**PER CURIAM:**

A general court-martial found the appellant guilty, in accordance with his pleas, of the wrongful use and distribution of 3, 4-methylenedioxymethamphetamine (also known as ecstasy) and lysergic acid diethylamide (also known as LSD) on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a, one specification of unlawful entry of a dormitory room, in violation of Article 134, UCMJ, 10 U.S.C. § 934, one specification of wrongful appropriation of an automobile, in violation of Article 121, UCMJ, 10 U.S.C. § 921, and one specification of failure to go to his place of duty, in violation of Article 86, UCMJ, 10 U.S.C. § 886. The military judge sentenced the appellant to a dishonorable discharge, confinement for 2 years, forfeiture of all pay and allowances, and reduction to E-1.

The convening authority approved the sentence adjudged, but reduced the period of confinement to 19 months. The convening authority also granted some clemency to the appellant by waiving the mandatory forfeiture of pay arising under Article 58b(b), UCMJ, 10 U.S.C. § 858b(b). The formal action of the convening authority provided, in pertinent part, “Pursuant to Article 58b, Uniform Code of Military Justice, Section (b), the forfeiture of all pay and allowances is waived for a period of 6 months, beginning 31 January 2002. The total pay and allowances is directed to be paid to his wife, Angela Divilio.”

The appellant notes that the convening authority did not disapprove or suspend the adjudged forfeitures before approving the waiver of the automatic forfeitures, as required by *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002), decided after the action in this case. The appellant expresses concern that because the waiver of the automatic forfeitures was not technically correct, the funds may be recouped at a later time. The appellant now invites this Court to take appropriate action to ensure that the intent of the convening authority is satisfied.

We find that the convening authority intended to take appropriate action to waive the automatic forfeitures under Article 58b(b), UCMJ. The convening authority’s action is not ambiguous, even if it is not technically correct under *Emminizer*. As we stated in *United States v. Medina*, 59 M.J. 571, 572 (A.F. Ct. Crim. App. 2003):

There is no need for this Court to disapprove the appellant's adjudged forfeitures where the convening authority clearly intended to waive the mandatory forfeitures, the action carried out such waiver in a manner compliant with the understanding of Article 58b, UCMJ, at the time, and the appellant's [dependent] received the pay at issue. *Cf. United States v. Loft*, 10 M.J. 266, 268 (C.M.A. 1981) (holding that where the convening authority's action is subject to only one interpretation, a supervisory authority is not required to return the record of court-martial to the convening authority for clarification).

We hold that the convening authority intended to approve the waiver of forfeitures and that his action was effective to do so, even if it did not technically comply with *Emminizer*.

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

HEATHER D. LABE  
Clerk of Court