UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic CRAIG K. WHITE
United States Air Force

ACM 35598

17 February 2005

Sentence adjudged 6 May 2003 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Thomas G. Crossan (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 18 months, and a fine of $450.00.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Sandra K. Whittington, and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Michelle M. Lindo.

Before

STONE, GENT, and JOHNSON
Appellate Military Judges

PER CURIAM:

We have carefully reviewed the record of trial, the appellant's assignments of error, and the government's response thereto. The appellant first asserts that his convictions should be set aside because the commander of the Ninth Air Force (Provisional) had no authority to convene general courts-martial when he referred charges to trial and took final action. We disagree. For the reasons we set forth in *United States v. Hardy*, 60 M.J. 620 (A.F. Ct. Crim. App. 2004), *pet. denied*, 04-0790/AF (12 Jan 2005), we conclude that the commander of the Ninth Air Force (Provisional) was properly authorized to convene courts-martial at the time he referred charges and took final action.

Next, the appellant asserts that post-trial processing was defective because the staff judge advocate's recommendation (SJAR) and its addendum failed to include information as required by Rule for Courts-Martial (R.C.M.) 1106(d)(3)(B) and (F). Contrary to the appellant's assertion, the sentencing authority did not make a clemency recommendation at the time sentence was announced, and thus there was no violation of R.C.M. 1106(d)(3)(B). And, although the SJAR did not specifically address the appellant's request to be entered into the Return to Duty Program, or the numerous documents that explained the program's requirements, the addendum did include a specific recommendation as to the action to be taken on the sentence as required by R.C.M. 1106(d)(3)(F). Consequently, we conclude the convening authority was provided complete and accurate advice.

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