UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ANTHONY C. WILLIS
United States Air Force

ACM S30102

12 January 2004

Sentence adjudged 20 February 2002 by SPCM convened at Cannon Air Force Base, New Mexico. Military Judge: Gregory E. Pavlik (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, forfeiture of $450.00 pay per month for 6 months, and reduction to E-1.

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

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:

The appellant was convicted, in accordance with his pleas, of abandoning his watch in violation of Article 86, UCMJ, 10 U.S.C. § 886, failing to obey a lawful general regulation in violation of Article 92, UCMJ, 10 U.S.C. § 892, larceny in violation of Article 121, 10 U.S.C. § 921, and wrongfully making and using a false military identification card in violation of Article 134, UCMJ, 10 U.S.C. § 934. A military judge sitting alone as a special court-martial sentenced the appellant to a bad-conduct discharge, confinement for 3 months, forfeiture of $450.00 pay per month for 6 months, and reduction to E-1. The convening authority approved the sentence as adjudged. The appellant now claims the findings and sentence may not be affirmed because the record of trial does not demonstrate that the convening authority received and considered the

defense clemency submissions, as required by *United States v. Craig*, 28 M.J. 321 (C.M.A. 1989).

In *United States v. Gaddy*, 54 M.J. 769, 773 (A.F. Ct. Crim. App. 2001), *pet. denied*, 55 M.J. 245 (C.A.A.F. 2001), this Court summarized the military law in this area.

> Article 60(c)(2), UCMJ, 10 U.S.C. § 860(c)(2), requires the convening authority to consider matters submitted by an accused before taking action on a sentence. Appellate courts will not speculate on whether a convening authority considered these materials. *United States v. Craig*, 28 M.J. 321, 325 (C.M.A. 1989). This Court presumes a convening authority has done so if the SJA [staff judge advocate] prepared an addendum to the SJAR [staff judge advocate's recommendation] that (1) tells the convening authority of the matters submitted, (2) advises the convening authority that he or she must consider the matters, and (3) the addendum listed the attachments, indicating they were actually provided. *United States v. Foy*, 30 M.J. 664 (A.F.C.M.R. 1990). If no addendum to the SJAR is prepared, then the record must reflect that the convening authority was properly advised of the obligation to consider the matters submitted, and there must be some evidence (such as the convening authority's initials) showing the matters were actually reviewed. *United States v. Godreau*, 31 M.J. 809, 811-12 (A.F.C.M.R. 1990).

In this case the addendum prepared by the SJA does not inform the convening authority that the defense submitted matters in clemency, it does not list them, nor does it advise the convening authority that he must consider them before taking action on the findings and sentence. The clemency submissions are included within the record of trial, however.

In similar circumstances, we have allowed the government to "enhance the 'paper trail.'" *United States v. Blanch*, 29 M.J. 672, 673 (A.F.C.M.R. 1989). By separate motion, the government submitted affidavits from the SJA and the convening authority. The SJA specifically remembers providing the clemency matters to the convening authority for consideration. The convening authority states that he specifically recalls considering the defense clemency submissions before taking approving the findings and sentence. Considering these documents, we are satisfied that the convening authority properly considered the appellant's clemency submissions before taking action in this case.

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

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator