

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

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**UNITED STATES**

**v.**

**Senior Master Sergeant RICHARD S. WINCH**  
**United States Air Force**

**ACM 35234 (f rev)**

**22 July 2005**

Sentence adjudged 14 February 2002 by GCM convened at Brooks Air Force Base, Texas. Military Judge: Patrick M. Rosenow.

Approved sentence: Confinement for 18 months, a \$2000.00 fine, and reduction to E-4.

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

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, Lieutenant Colonel Michael E. Savage, Major John C. Johnson, and Captain Steven R. Kaufman.

Before

STONE, MOODY, and MATHEWS  
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before us for a second time. We previously affirmed the findings but, finding an error in the post-trial processing, we set aside the action of the convening authority and returned the record for new post-trial processing. *United States v. Winch*, ACM 35234 (A.F. Ct. Crim. App. 19 Aug 2004) (unpub. op.). In the intervening months before a new action was completed, the Secretary of the Air Force, acting pursuant to Air Force Instruction 36-3208, *Administrative Separation of Airmen*, ¶ 1.2 (10 Mar 2000), directed the appellant's discharge from the military for the good of the service. The appellant now contends that this action served to deprive him of the convening authority

review to which he was entitled under Article 60, UCMJ, 10 U.S.C. § 860, and argues that dismissal of both the findings and sentence is the only appropriate result. We disagree. *See Steele v. Van Riper*, 50 M.J. 89, 91 (C.A.A.F. 1999) (“[T]he power of review authorities over the court-martial is unaffected by [an] administrative discharge.”).

The appellant argues in the alternative that, even if legally allowed to act, the convening authority felt constrained by the Secretary’s action to grant clemency. The convening authority, however, had the benefit of his staff judge advocate’s advice that the Secretary’s action was not controlling and did not affect the convening authority’s obligation to be fair and impartial in reviewing the appellant’s case. In light of this advice, and the utter absence of any evidence suggesting the convening authority was influenced by the Secretary’s action, the appellant’s position remains entirely conjectural. We decline to join in that conjecture.

We conclude that the approved findings and the sentence are correct in law and fact. On the basis of the entire record now before us, 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