

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman KYWAMAINE D. YOUNG
United States Air Force

ACM S30185

12 October 2004

Sentence adjudged 18 July 2002 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Steven B. Thompson (sitting alone).

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

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Captain Kevin P. Stiens.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

We have carefully reviewed the record of trial, the appellant's single assignment of error, and the government's response. The appellant asserts that the staff judge advocate's recommendation (SJAR) was defective because it failed to include information from his service record as required by Rule for Courts-Martial (R.C.M.) 1106(d)(3)(C). He asks that this Court disapprove his bad-conduct discharge or, alternatively, set aside the action and return the case for new post-trial processing. We disagree and affirm.

At trial, a Personal Data Sheet (PDS) was admitted as evidence during the presentencing proceedings. This document included information relating to the appellant's service record. The PDS was referenced in the body of the SJAR and listed as an

attachment, but was not included in the allied papers found in the record of trial. Circumstantially, this indicates the PDS was provided to the convening authority prior to taking action. We have also considered the post-trial affidavit from the staff judge advocate stating the PDS was included in the documents provided to the convening authority. See *United States v. Blanch*, 29 M.J. 672 (A.F.C.M.R. 1989). Consequently, we are convinced we are dealing with an “administrative failure” to attach the PDS to the record of trial and that the information required by R.C.M. 1106(d)(3)(C) was supplied to the convening authority. *United States v. McKinley*, 48 M.J. 280, 283 (C.A.A.F. 1998).

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