

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman RONALD D. ANASTASIA II
United States Air Force

ACM S31663

10 June 2010

Sentence adjudged 28 April 2009 by SPCM convened at Yokota Air Base, Japan. Military Judge: Mark L. Allred.

Approved sentence: Bad-conduct discharge, forfeiture of \$700.00 pay per month for 12 months, restriction to the limits of Yokota Air Base for 2 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Major Marla J. Gillman.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, Major Jason M. Kellhofer, and Gerald R. Bruce, Esquire.

Before

BRAND, JACKSON, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with the appellant's pleas, a military judge found the appellant guilty of one specification of wrongful use of a controlled substance and one specification of wrongful distribution of a controlled substance, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A panel of officer members sitting as a special court-martial sentenced him to a bad-conduct discharge, 2 months of restriction to base, forfeiture of \$700 pay per month for 12 months, and reduction to the grade of E-1. The convening authority approved the sentence as adjudged.

On appeal, the appellant asks this Court to set aside his bad-conduct discharge or, in the alternative, to set aside the sentence and remand his case for new post-trial processing. As the basis for his request, he asserts that the convening authority's action should be set aside because there are numerous errors in the post-trial processing of his case. Namely, the appellant asserts that the staff judge advocate failed to advise the convening authority that he must consider matters submitted by the appellant prior to action and that the convening authority's action is invalid because Captain JE, the assistant trial counsel, signed the promulgating order. Finding no prejudicial error, we affirm the findings and the sentence.

Background

At trial, the appellant pled guilty to using and distributing ecstasy. In support of his plea, the appellant testified that on 22 November 2008, he and his girlfriend went to a coffee shop on the outskirts of Tokyo, Japan, and while there he was offered and purchased two ecstasy pills. The appellant also testified that shortly after purchasing the ecstasy pills he ingested half of one pill and provided the other half to his girlfriend, who, in turn, ingested it. In accordance with his pleas, the military judge found the appellant guilty.

On 15 May 2009, the staff judge advocate provided the staff judge advocate recommendation (SJAR) to the convening authority. On 29 May 2009, the appellant submitted his clemency request to the convening authority. On 3 June 2009, the convening authority took action on the appellant's case. That same day, Captain JE, in his role as the acting staff judge advocate, signed the promulgating order. On 24 June 2009, the staff judge advocate submitted a SJAR addendum to the convening authority. In the addendum, the staff judge advocate advised the convening authority that he must consider matters submitted by the appellant prior to taking action in the appellant's case. That same day, the convening authority withdrew his 3 June 2009 action, rescinded the 3 June 2009 promulgating order, and approved the sentence as adjudged. Later that day, the staff judge advocate signed a new promulgating order.

Discussion

We review post-trial processing issues de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)). Prior to taking final action, the convening authority must consider clemency matters submitted by the accused. *United States v. Craig*, 28 M.J. 321, 324-25 (C.M.A. 1989); Rule for Courts-Martial (R.C.M.) 1107(b)(3)(A)(iii). The preferred method of documenting a convening authority's review of clemency submissions is completion of an addendum to the SJAR. *United States v. Godreau*, 31 M.J. 809, 811-12 (A.F.C.M.R. 1990). The addendum should: (1) brief the convening authority that the accused has submitted clemency matters; (2) advise the convening authority that he must consider the

accused's clemency submission before taking action; and (3) list the accused's clemency matters as attachments. *Id.* at 811 (citing *United States v. Foy*, 30 M.J. 664, 665 (A.F.C.M.R. 1990)). While such an addendum is not required, in its absence this Court "must have some reliable means of verifying that the convening authority actually considered the appellant's submissions." *Id.* at 812 (citing *Craig*, 28 M.J. at 325). Lastly, Article 6(c), UCMJ, 10 U.S.C. § 806(c), prohibits, inter alia, an assistant trial counsel from acting as staff judge advocate to any reviewing authority in the same case in which he served as the assistant trial counsel.

The record, as supplemented by the appellee on 12 May 2010, makes it clear that on 24 June 2009, the staff judge advocate and the convening authority realized that the initial post-trial processing of the appellant's case did not comply with the requirements of Article 6(c), UCMJ, R.C.M. 1107(b)(3)(A)(iii), and case law governing a convening authority's consideration of clemency requests from an accused. The record also makes clear that on that same day the staff judge advocate and the convening authority took action—namely, withdrawing the old action and starting the post-trial processing anew—to rectify the issues of which the appellant complains. In short, in light of the corrective actions, there are no errors with the post-trial processing of the appellant's case.


Conclusion

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




STEVEN LUCAS, YA-02, DAF
Clerk of the Court