UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DANIEL J. ANDRADE
United States Air Force

ACM S30468

26 May 2005

Sentence adjudged 27 August 2003 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: Barbara G. Brand (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Brandon A. Burnett, Major Terry L. McElyea, and Major Andrea M. Gormel.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Heather L. Mazzeno.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's answer thereto. The appellant avers that the staff judge advocate's recommendation (SJAR) was defective in that it did not advise the convening authority that the military judge failed to formally dismiss with prejudice one of the specifications and the excepted language of another. Because the trial defense counsel did not comment on this matter, we test for plain error. Rule for Courts-Martial (R.C.M.) 1106(f)(6); *United States v. Wellington*, 58 M.J. 420, 427 (C.A.A.F. 2003). *See also United States v. Powell*, 49 M.J. 460 (C.A.A.F. 1998).

After the appellant successfully pled guilty to most of the charges and specifications, the trial counsel made a motion to dismiss, with prejudice, Specification 5

of Charge I and excepted language from the Specification under Charge II. Trial counsel did this to fulfill the convening authority's obligations under the pretrial agreement (PTA). Although the military judge's ruling was not explicitly made on the record, we conclude she effectively granted the motion to dismiss. Indeed, after the military judge entered her findings on the remaining charges and specifications, the parties acted consistent with an understanding that Specification 5 of Charge I and the excepted language from the Specification under Charge II were no longer before the court. Moreover, we conclude they were dismissed with prejudice by operation of law pursuant to the terms of the PTA as soon as the military judge accepted the appellant's pleas to the remaining specifications and language. The military judge's findings were properly entered, and thus the SJA had no obligation to advise the convening authority to "correct" them.

Finally, we note that the Report of Result of Trial attached to the SJAR correctly states the disposition of the charges and specifications. The promulgating order is also consistent with the terms of the PTA. Thus, we find that the convening authority was not misled or misinformed about the findings of guilty. We hold that the SJAR complies with R.C.M. 1106 and is not plainly in error.

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