UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman BOBBIE J. ARRINGTON
United States Air Force

ACM 37698 (f rev)

09 May 2013

Sentence adjudged 26 March 2010 by GCM convened at Grand Forks Air Force Base, North Dakota. Military Judge: Jeffrey A. Ferguson.

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Eric N. Eklund; Lieutenant Colonel Gail E. Crawford; Lieutenant Colonel Darrin K. Johns; and Major Nathan A. White.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel Linell A. Lentendre; Major Brian C. Mason; Major Naomi N. Porterfield; Major Charles G. Warren; and Gerald R. Bruce, Esquire.

Before

ROAN, MARKSTEINER, and HECKER
Appellate Military Judges

UPON FURTHER REVIEW

This opinion is subject to editorial correction before final release.

PER CURIAM:

Contrary to her pleas, the appellant was convicted at a general court-martial comprised of officers of one specification of making a false official statement, two specifications of wrongful use of Dilaudid, one specification of wrongful use of cocaine, one specification of wrongful distribution of ecstasy, and two specifications of wrongful solicitation to distribute Percocet and morphine, in violation of Articles 107, 112a, and

134, 10 U.S.C. §§ 907, 912a, 934.[1] The adjudged sentence consisted of a bad-conduct discharge, confinement for 12 months, forfeitures of all pay and allowances, and reduction to the grade of E-1. The convening authority disapproved the finding of guilty for Specification 1 of Charge IV (solicitation to distribute Percocet) but approved the remaining findings of guilty. The convening authority then approved the bad-conduct discharge, 12 months of confinement, and reduction to E-1, but disapproved the adjudged forfeitures. He further waived mandatory forfeitures for the benefit of the appellant's family.

On 25 March 2013, this Court set aside and dismissed the finding of guilty to Specification 3 of Charge IV (solicitation to distribute morphine) pursuant to *United States v. Humphries*, 71 M.J. 209 (C.A.A.F. 2012), and affirmed the remaining findings of guilty. Based on error in the Staff Judge Advocate's Recommendation (SJAR), we also found the appellant had "made a colorable showing that the convening authority intended to grant clemency, but that intent may have been thwarted by improper advice from the [staff judge advocate]." Accordingly, we ordered the sentence set aside and the record of trial returned to The Judge Advocate General for remand to the appropriate convening authority for a new Action. Due to the set aside of Specification 3, we also authorized a rehearing on the sentence. *United States v. Arrington*, ACM 37698 (A.F. Ct. Crim. App. 25 March 2013) (unpub. op.).

On 1 April 2013, the Government requested that we reconsider our decision, asking us to clarify the meaning of our opinion and suggesting that the proper course of action would be to only order a remand to the convening authority as that will allow the convening authority to order a sentencing hearing if he deemed it appropriate.[2]

Upon reconsideration, we now clarify our initial ruling. The record of trial is to be returned to The Judge Advocate General for remand to the convening authority for a new SJAR, Action, and court-martial order, consistent with the opinion of this Court. The finding of guilty to Specification 3 of Charge IV is set aside and dismissed, and the remaining findings are correct in law and fact.[3] The sentence is set aside and a rehearing on sentence is authorized. Pursuant to the standards found in R.C.M. 1107(e)(1)(B)(iv),

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[1] The appellant was acquitted of one specification of violating Article 107, UCMJ, 10 U.S.C. § 907; five specifications of violating Article 112a, UCMJ, 10 U.S.C. § 912a; one specification of violating Article 121, UCMJ, 10 U.S.C. § 921; and one specification of violating Article 134, UMCJ, 10 U.S.C. § 934.

[2] On 24 April 2013, the appellant also filed a motion for reconsideration, asking us to reconsider our holding that the trial defense counsel were not ineffective in their handling of the admission of a Drug Testing Report which the Government used as proof of the appellant's use of cocaine (Specification 4 of Charge II). We deny this request for reconsideration.

[3] This does not include Specification 1 of Charge IV, as the convening authority disapproved the appellant's finding of guilt as to that allegation. Article 66(c), UCMJ, 10 U.S.C. § 866(c) (A court of criminal appeals may act only with respect to the findings and sentence as approved by the convening authority).

the convening authority may reassess the sentence based on the approved findings of guilty.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court