

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

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**UNITED STATES**

**v.**

**Airman DELVIN J. BARNES**  
**United States Air Force**

**ACM 35048 (f rev)**

**16 November 2005**

Sentence adjudged 25 January 2002 by GCM convened at Luke Air Force Base, Arizona. Military Judge: Steven B. Thompson.

Approved sentence: Bad-conduct discharge, confinement for 1 year, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Lieutenant Colonel Mark R. Strickland, Major Terry L. McElyea, Major Sandra K. Whittington, Major Andrew S. Williams, Major Jennifer K. Martwick, Captain Christopher S. Morgan, and Captain John S. Fredland.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Lieutenant Colonel William B. Smith, Major Matthew J. Mulbarger, and Captain C. Taylor Smith.

Before

**BROWN, ORR, and MOODY**  
Appellate Military Judges

**UPON FURTHER REVIEW**

**PER CURIAM:**

This case is before our Court for further review because the original action by the convening authority was set aside by the United States Court of Appeals for the Armed Forces (C.A.A.F.). The appellant was convicted, contrary to his pleas, by a general court-martial of one specification of attempted larceny, one specification of conspiracy to commit larceny, two specifications of larceny, one specification of forgery, two specifications of uttering worthless checks with intent to defraud, and one specification of

dishonorable failure to pay just debts, in violation of Articles 80, 81, 121, 123, 123a, and 134, UCMJ, 10 U.S.C. §§ 880, 881, 921, 923, 923a, 934. A panel of officer members sentenced him to a bad-conduct discharge, confinement for 1 year, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the sentence as adjudged and forwarded the record for review by this Court under Article 66(c), UCMJ, 10 U.S.C. § 866(c).

This Court affirmed the findings and sentence. On 21 July 2004, the C.A.A.F. set aside the decision of this Court and the convening authority's action. *United States v. Barnes*, 60 M.J. 284 (C.A.A.F. 2004). Our superior court returned the case to the convening authority for a new action in light of the decisions in *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002) and *United States v. Lajaunie* 60 M.J. 280 (C.A.A.F. 2004). On 14 January 2005, the convening authority completed a new action approving only so much of the sentence that provided for a bad-conduct discharge, confinement for one year, reduction to E-1, forfeiture of all pay and allowances, except the forfeiture of \$1,105.50 pay and allowances for the period of 20 March 2002 to 19 September 2002. Additionally, the convening authority waived the automatic forfeitures of all pay and allowances for a period of six months or release from confinement, whichever is sooner, for the benefit of the appellant's children.

Subsequently, this Court returned the record of trial to The Judge Advocate General for remand to the convening authority because the convening authority's action dated 14 January 2005 was ambiguous. *United States v. Barnes*, ACM 35048 (A.F. Ct. Crim. App. 29 June 2005) (unpub. op.). On 1 August 2005, the convening authority completed a new action that provided for the waiver of forfeitures "of \$1,105.50 pay per month for the period of 20 March 2002 to 19 September 2002."

The appellant has submitted the record and new action for further review without any additional assignments of error. Our review discloses no substantive 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; *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