

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

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**UNITED STATES**

**v.**

**Airman Basic BROOKE M. BISSINGER  
United States Air Force**

**ACM S32044**

**05 September 2013**

Sentence adjudged 9 January 2012 by SPCM convened at Minot Air Force Base, North Dakota. Military Judge: Natalie Richardson.

Approved Sentence: Bad-conduct discharge, confinement for 4 months, and forfeiture of \$994.00 pay per month for 4 months.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Don M. Christensen; Lieutenant Colonel C. Taylor Smith; and Major Rhea A. Lagano.

Before

ROAN, MARKSTEINER, and WIEDIE  
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

PER CURIAM:

At a special court-martial composed of officer members, the appellant pled guilty to four specifications alleging unlawful possession, distribution, and use of various controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a, and to one specification alleging wrongful use of an intoxicating substance, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court sentenced her to be discharged from the Air Force with a bad-conduct discharge, to be confined for 4 months, and to forfeiture of \$994.00 pay per month for 4 months. The convening authority approved the sentence as adjudged, but deferred the imposition of confinement from 12 January 2012 until 10 February 2012. The appellant urges this Court to order new post-trial processing

because the staff judge advocate (SJA) did not prepare a written addendum to his staff judge advocate recommendation (SJAR) addressing the appellant's Rule for Courts-Martial (R.C.M.) 1105 submission ("clemency submission") for the convening authority's consideration prior to taking final action on the appellant's case.

The SJAR in this case is dated 8 March 2012. The appellant submitted clemency matters through her counsel on 21 March 2012. Via sworn post-trial affidavit, the SJA confirms that he did not prepare a written addendum to his 8 March 2012 SJAR. He also confirms, nevertheless, that he personally met with the convening authority on 23 March 2012, provided him a copy of the appellant's 21 March 2012 clemency submission, and informed him that he, the convening authority, was required to consider all matters submitted by the appellant before taking action on the case. The convening authority also confirmed, via sworn post-trial affidavit, that he was informed of the requirement to review all clemency matters submitted by the appellant before acting on her case and that he in fact did so.

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)). It is well-settled law that a record of trial must clearly show that the convening authority in a given case did in fact consider any post-trial matters properly submitted by an accused before taking action on that accused's case. *See, e.g., United States v. Craig*, 28 M.J. 321 (C.M.A. 1989). *See also* Article 60(c)(2), UCMJ, 10 U.S.C. § 860(c)(2); R.C.M. 1107(b)(3)(A)(iii). The better practice is to prepare a written addendum to the SJAR addressing an accused's clemency submissions. *United States v. Foy*, 30 M.J. 664 (A.F.C.M.R. 1990). Where an accused has properly submitted clemency matters but no addendum to the SJAR is prepared, the Government may still demonstrate compliance with the law by submitting "some reliable means of verifying that the convening authority actually considered the appellant's submissions." *United States v. Godreau*, 31 M.J. 809, 812 (A.F.C.M.R. 1990) (citing *Craig*, 28 M.J. at 325). "For these cases, we will require that the Government submit an affidavit from the convening authority." *Godreau*, 31 M.J. at 812.

The Government did precisely that in this 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.



FOR THE COURT

STEVEN LUCAS  
Clerk of the Court