

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

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**UNITED STATES**

**v.**

**Airman MATTHEW L. BORSETH  
United States Air Force**

**ACM 36203**

**27 February 2006**

Sentence adjudged 28 December 2004 by GCM convened at Scott Air Force Base, Illinois. Military Judge: Kevin P. Koehler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 11 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland and Captain Christopher S. Morgan.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer.

Before

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

**PER CURIAM:**

This case was submitted to this Court for review under Article 66(c), UCMJ, 10 U.S.C. § 866(c), on its merits. 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).

However, at trial, the military judge found that the appellant had been subjected to unlawful pretrial punishment in violation of Article 13, UCMJ, 10 U.S.C. § 813, and ordered that appellant receive 14 days credit against his sentence to confinement. On 22 February 2005, the convening authority approved the findings and sentence but did not direct in the action that the appellant receive credit under R.C.M. 305(k). *See* R.C.M. 1107(f)(4)(F).

Accordingly, we return the record of trial to The Judge Advocate General for remand to the convening authority to withdraw the erroneous action and substitute a corrected action and promulgating order. Thereafter, Article 66, UCMJ, 10 U.S.C. § 866, shall apply.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court