

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JOSHUA K. BORTH
United States Air Force

ACM S31234

26 September 2007

Sentence adjudged 13 August 2006 by SPCM convened at Manas Air Base, Kyrgyz Republic. Military Judge: Adam Oler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Christopher L. Ferretti.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major John P. Taitt.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of two specifications of larceny, in violation of Article 121, UCMJ, 10 U.S.C. § 921. His approved sentence consists of a bad-conduct discharge, confinement for 4 months, and reduction to the grade of E-1.

The appellant asserts that the convening authority erred by failing to reference in his action the illegal pretrial confinement credit ordered by the military judge. Rule for Courts-Martial (R.C.M.) 1107(f)(4)(F) states when the military judge has directed that the accused receive credit under R.C.M. 305(k), the convening authority shall so direct in the

action. Appellate government concedes this error. We direct that the action be corrected to accurately reflect the illegal pretrial confinement credit awarded by the military judge.

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 findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF
Clerk of the Court