

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Chief Master Sergeant STEVE B. BRADY
United States Air Force**

ACM 35937 (f rev)

29 November 2007

Sentence adjudged 6 February 2007 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Lance B. Sigmon and upon rehearing W. Thomas Cumbie (sitting alone).

Approved sentence: Confinement for 3 months, forfeiture of \$4,000.00 pay per month for 3 months, reprimand, and reduction to E-7.

Appellate Counsel for Appellant: Frank J. Spinner, Esq. (argued), Colonel Nikki A. Hall, Colonel Carlos L. McDade, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, Captain Timothy M. Cox, and Captain Diane M. Paskey.

Appellate Counsel for the United States: Captain Jefferson E. McBride (argued), Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Lieutenant Colonel Michael E. Savage, Lieutenant Colonel Nurit Anderson, Major Matthew S. Ward, Major John C. Johnson, and Captain Kimani R. Eason.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

UPON FURTHER REVIEW

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial comprised of officer members convicted the appellant, contrary to his pleas, of two specifications of committing indecent acts upon a child under the age of 16, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The appellant

was sentenced to a dishonorable discharge, confinement for 2 years, and reduction to the lowest enlisted grade. On 20 July 2006 this Court set aside the finding of guilty to one of the two specifications, set aside the sentence, and authorized a sentencing rehearing. On 6 February 2007 a military judge sitting alone as a general court-martial sentenced the appellant to be reprimanded, to forfeit \$4,000.00 pay per month for 3 months, to be confined for 3 months,¹ and to be reduced to the grade of E-7. The convening authority approved the sentence as adjudged.

In his sole assignment of error upon further review, the appellant claims he is entitled to credit against the approved forfeitures because he served 9 months of post-trial confinement as a result of his original sentence and, upon rehearing, was sentenced to only 3 months of confinement.² We agree with the appellant's contention that the applicable caselaw entitles him to such credit and find the most expedient method by which to accomplish this is to disapprove the adjudged forfeitures. *North Carolina v. Pearce*, 395 U.S. 711 (1969); *United States v. Rosenthahl*, 53 M.J. 344 (C.A.A.F. 2000); *United States v. Josey*, 58 M.J. 105 (C.A.A.F. 2003); Rule for Courts-Martial 305(k).

Conclusion

The 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). However, we affirm only so much of the sentence as includes a reprimand, confinement for 3 months, and reduction to the rank of E-7. Accordingly, the findings and sentence, as modified, are

AFFIRMED.

OFFICIAL



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

¹ The appellant was not returned to confinement after the rehearing, having already served nine months against what subsequently became a three-month sentence.

² We reject the government's contention that this issue was waived by failing to raise it during the clemency process. While the appellant's clemency request certainly could have been articulated more clearly, the crux of the submission was a request that the convening authority not approve the forfeitures.