

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic MICHAEL E. CAYER
United States Air Force**

ACM S31577

14 September 2009

Sentence adjudged 30 October 2008 by SPCM convened at Hill Air Force Base, Utah. Military Judge: Grant L. Kratz (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 75 days.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Captain Nicholas W. McCue, and Captain Tiaundra D. Sorrell.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Major Jeremy S. Weber, Captain Charles G. Warren, and Gerald R. Bruce, Esquire.

Before

**FRANCIS, JACKSON, and THOMPSON
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

Pursuant to his plea, a military judge sitting as a special court-martial found the appellant guilty of one specification of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The military judge sentenced the appellant to a bad-conduct discharge and three months of confinement. The convening authority approved the bad-conduct discharge and 75 days of confinement.* On appeal, the appellant asks the Court to set aside his bad-conduct discharge because there is no addendum to the staff

* The appellant and the convening authority entered into a pretrial agreement wherein the appellant agreed to plead guilty to the charge and specification in return for the convening authority's promise not to approve confinement in excess of 75 days.

judge advocate's recommendation (SJAR). He therefore alleges there is no way to know if the convening authority received or considered the appellant's clemency submissions. Finding no error, we affirm.

Discussion

We review post-trial processing issues de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004). Prior to taking final action, the convening authority must consider clemency matters submitted by the accused. *United States v. Craig*, 28 M.J. 321, 325 (C.M.A. 1989); Rule for Courts-Martial 1107(b)(3)(A)(iii). The preferred method of documenting a convening authority's review of clemency submissions is completion of an addendum to the SJAR. *United States v. Godreau*, 31 M.J. 809, 812 (A.F.C.M.R. 1990).

The addendum should: (1) inform the convening authority that the accused has submitted matters which are attached to the addendum; (2) inform the convening authority that he or she must consider matters submitted by the accused before taking action; and (3) list as attachments the matters submitted by the accused. *Id.* at 811 (citing *United States v. Foy*, 30 M.J. 664, 665-66 (A.F.C.M.R. 1990)). While such an addendum is not required, in its absence this Court "must have some reliable means of verifying that the convening authority actually considered the appellant's submissions." *United States v. Godreau*, 31 M.J. at 812. In the absence of an addendum, the government may submit an affidavit from the convening authority confirming he properly considered the appellant's clemency matters. *Id.*

In response to appellate defense counsel's brief on this issue, appellate government counsel submitted affidavits from the convening authority and the convening authority's staff judge advocate (SJA). The convening authority avers her SJA provided the appellant's clemency submissions and advised she must consider the appellant's submissions prior to taking action. The convening authority further maintains she considered the appellant's submissions before taking action in this case.

The SJA avers he provided the convening authority with the appellant's clemency submissions and discussed these matters with the convening authority before she took action in the appellant's case. In light of these affidavits, we find the convening authority received and considered the appellant's clemency submissions prior to taking action 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.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal and extends to the right.

STEVEN LUCAS, YA-02, DAF
Clerk of the Court