UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class CHARLES N. CHILDRES JR.
United States Air Force

ACM 35473

31 January 2005

Sentence adjudged 22 October 2002 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: Israel B. Willner (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 45 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Andrea M. Gormel, and Captain Diane M. Paskey.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, Major Kevin P. Stiens, and Captain Stacey J. Vetter.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, the matters personally raised by the appellant, and the government's reply thereto. The appellant asserts that post-trial processing in his case was defective because the addendum to the staff judge advocate's recommendation failed to list a videotape he submitted for the convening authority's consideration. This videotape included interviews with four of the appellant's family members and discussed his family circumstances and lack of disciplinary problems. We have considered the post-trial affidavit from the staff judge advocate stating the videotape was included in the documents provided to the convening authority. *See United States v. Blanch*, 29 M.J. 672 (A.F.C.M.R. 1989). Based upon this affidavit, we conclude the convening authority received all of the appellant's submissions made pursuant to Rule for Courts-Martial (R.C.M.) 1105, to include the videotape. A

convening authority is not required to consider clemency submissions that are not in writing, however, and thus the government was not required to establish that he actually viewed the videotape. *See* Article 60(b)(1), UCMJ, 10 U.S.C. § 860(b)(1); R.C.M. 1105(b)(1), 1106(f)(4), and 1107(b)(3)(A) and (B). Additionally, we are unable to discern any prejudice. *See United States v. Wheelus*, 49 M.J. 283 (C.A.A.F. 1998). The videotape largely duplicated matters already attached and included in the clemency petition. Finally, we have considered the additional issues raised by the appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and find them to be without merit. *United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987).

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

ANGELA M. BRICE
Clerk of Court