

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JOSHUA P. CLELAN
United States Air Force

ACM 37150

29 January 2009

Sentence adjudged 19 November 2007 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Michael Savage (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 30 days, forfeiture of \$500.00 pay per month for 3 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Nikki A. Hall, Major Shannon A. Bennett, Major David P. Bennett, and Captain Tiffany M. Wagner.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Jeremy S. Weber.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Pursuant to his pleas, a military judge sitting as a general court-martial found the appellant guilty of one specification of wrongful distribution of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.* The military judge sentenced the appellant to a bad-conduct discharge, to 30 days of confinement, “to forfeit \$500 . . . pay for three

* The appellant was also charged with wrongful possession of cocaine, but pursuant to a pretrial agreement, the convening authority withdrew and dismissed that specification after the military judge accepted the appellant's plea to the specification of wrongful distribution of cocaine.

months,” and to be reduced to E-1. The convening authority approved the findings, the bad-conduct discharge, the confinement, “forfeiture of \$500.00 pay per month for 3 months,” and the reduction in rank. The appellant asks this Court to order the convening authority to modify the approved forfeitures from “\$500.00 pay per month for 3 months” to \$500 pay for one month. The basis for his request is that by omitting the words “per month,” the amount the military judge announced, “\$500,” is the total amount to be forfeited. We agree; finding error in the announcement of the sentence, we affirm the findings and reassess the sentence.

Background

On 15 July 2006, the appellant and his friends went to a house party at an off-base residence. While there, Airman First Class (A1C) JR, an acquaintance, approached the appellant about procuring some cocaine. Unbeknown to the appellant, A1C JR was a confidential informant with the Air Force Office of Special Investigations (AFOSI). The appellant collected money from A1C JR and called a drug dealer, with whom he had resided, to deliver the cocaine. When the drug dealer arrived at the party, the appellant purchased the cocaine from the drug dealer and provided it to A1C JR.

Later that evening, the appellant introduced Senior Airman (SrA) AW to A1C JR and told SrA AW that A1C JR had cocaine. As a result of the introduction, A1C JR provided some of the cocaine to SrA AW. A1C JR provided the remaining cocaine to the AFOSI who, in turn, provided it to the South Carolina Law Enforcement Division (SLED). The SLED tested the substance and verified that it was cocaine.

On 19 November 2007, the appellant providently pled to and was found guilty of wrongfully distributing cocaine. In announcing the forfeiture portion of the sentence, the military judge announced “Senior Airman Joshua P. Clelan, this court-martial sentences you . . . to forfeit \$500 of your pay for three months” (Emphasis Added). On 9 January 2008, the convening authority approved, *inter alia*, “forfeiture of \$500.00 pay per month for 3 months.” (Emphasis added). The announced sentence is erroneous in that the military judge, in announcing the forfeitures, omitted the words “per month.”

Erroneous Sentence Announcement

When a court-martial sentences an accused to forfeitures, the amount is to be stated in whole dollars per month and the number of months the forfeitures will last. Rule for Courts-Martial 1003(b)(2); *United States v. Gaston*, 62 M.J. 404, 408 (C.A.A.F. 2006); *United States v. Johnson*, 32 C.M.R. 127, 128 (C.M.A. 1962). Because the amount of forfeitures announced did not include the words “per month,” we find that the amount announced shall be the *total amount* to be forfeited. See *United States v. Jones*, 60 M.J. 964, 972 (A.F. Ct. Crim. App. 2005).

Conclusion

We affirm only so much of the sentence as provides for a bad-conduct discharge, 30 days confinement, forfeiture of \$500 pay for one month, and a reduction to E-1. All rights, privileges, and property of which the appellant has been deprived by virtue of the execution of forfeitures approved by the convening authority, which have not been affirmed, will be restored. The approved findings and sentence, as modified, 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, as modified, are

AFFIRMED.

OFFICIAL



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