

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman DAVID G. CONN
United States Air Force**

ACM S31949

21 December 2011

Sentence adjudged 20 April 2011 by SPCM convened at Aviano Air Base, Italy. Military Judge: Dawn R. Eflein (sitting alone).

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

Appellate Counsel for the Appellant: Captain Ja Rai A. Williams.

Appellate Counsel for the United States: Colonel Don M. Christensen.

Before

**ORR, GREGORY, and WEISS
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

Before a special court-martial composed of military judge alone, the appellant was convicted pursuant to his pleas of one specification of larceny greater than \$500.00, in violation of Article 121, UCMJ, 10 U.S.C. § 921, and one specification of violating Article 134, UCMJ, 10 U.S.C. § 934, by asking a security forces member to deactivate security alarms so that he could commit larceny. The military judge sentenced him to a bad-conduct discharge, confinement for 4 months, and reduction to E-1. A pretrial agreement capped confinement at 120 days. The military judge and the parties agreed that the agreement limited the amount of confinement that could be approved to 120 days because two of the four months during which the appellant would serve his confinement had 31 days each. However, in line with the recommendation of his staff judge advocate,

the convening authority approved the sentence adjudged rather than reducing the confinement as required by the parties' express understanding of the pretrial agreement.

We shall correct the error by modifying the sentence. We affirm only so much of the approved sentence as consists of a bad-conduct discharge, confinement for 120 days, and reduction to E-1. *See United States v. Shoemaker*, 58 M.J. 789 (A.F. Ct. Crim. App. 2003). The 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 (2000). Accordingly, the findings and the sentence, as modified, are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a faint horizontal line.

STEVEN LUCAS
Clerk of the Court

* The Court notes that the sole specification under Charge II is erroneously referenced as "Specification 2" in the court-martial order, but we find that there is no resulting prejudice to the appellant from this minor typographical error.