

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JOSEPH F. CRISTOBAL
United States Air Force**

ACM 35805

28 October 2005

Sentence adjudged 20 November 2003 by GCM convened at Mountain Home Air Force Base, Idaho. Military Judge: R. Scott Howard.

Approved sentence: Bad-conduct discharge, confinement for 134 days, hard labor without confinement for 30 days, forfeiture of all pay and allowances, restriction to the limits of Mountain Home Air Force Base for 60 days, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, Major James M Winner, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Kevin P. Stiens.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant asserts, and government counsel concedes, that under the facts of this case the convening authority should not have approved forfeitures in an amount greater than two-thirds of the appellant's total pay per month when he had completed his confinement but remained in active status serving the remainder of his punishment. We agree. *United States v. Warner*, 25 M.J. 64, 67 (C.M.A. 1987); Rule for Courts-Martial 1107(d)(2), Discussion.

We find only so much of the approved sentence as provides for a bad-conduct discharge, confinement for 134 days, hard labor without confinement for 30 days, forfeiture of \$767.00 pay per month for 2 months, restriction to the limits of Mountain Home Air Force Base for 60 days, and reduction to E-1, is correct in law and fact, and on the basis of the entire record, should be affirmed. Article 66(c) UCMJ, 10 U.S.C. § 866(c).

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; *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

ANGELA M. BRICE
Clerk of Court