

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Staff Sergeant ERIKA R. CURIEL
United States Air Force**

ACM S30836

29 June 2006

Sentence adjudged 2 February 2005 by SPCM convened at Vandenberg Air Force Base, California. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 185 days, and reduction to E-1.*

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

BROWN, MOODY, and JACOBSON
Appellate Military Judges

PER CURIAM:

We examined the record of trial, the assignments of error, and the government's response thereto. The appellant asks us to order new post-trial processing because the record does not establish that the convening authority received or considered the appellant's clemency submissions pursuant to Rule for Courts-Martial (R.C.M.) 1105. *See also* R.C.M. 1107(b)(3). For the reasons set forth below, we find error and return the case for new post-trial processing.

We review post-trial processing issues de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)). Prior to taking final action, the convening authority must consider clemency matters submitted by the accused. *United States v. Craig*, 28 M.J. 321, 324-25 (C.M.A.

* The convening authority's action, dated 14 March 2005, is fatally ambiguous, however, pursuant to the finding in this case this issue is moot.

1989). We cannot be sure that happened here. The staff judge advocate did not prepare an addendum to his recommendations. Consequently, he did not follow the procedures we set out in *United States v. Foy*, 30 M.J. 664, 665-66 (A.F.C.M.R. 1990). Neither is there evidence in the record that he informed the convening authority of his responsibility to review the appellant's clemency matters. See *United States v. Pelletier*, 31 M.J. 501 (A.F.C.M.R. 1990). Moreover, the government has not attempted to rectify these deficiencies by submitting an affidavit from the convening authority indicating he did consider the clemency matters submitted by the appellant. See *United States v. Godreau*, 31 M.J. 809, 810 (A.F.C.M.R. 1990).

Accordingly, we return the record of trial to The Judge Advocate General for resubmission to the appropriate convening authority for a new action upon consideration of the clemency matters previously submitted by the appellant and her trial defense counsel. Thereafter, Article 66, UCMJ, 10 U.S.C. § 866, shall apply.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator