

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Airman First Class JAMON D. CURRY**  
**United States Air Force**

**ACM S31182**

**24 September 2007**

Sentence adjudged 25 September 2006 by SPCM convened at Ellsworth Air Force Base, North Dakota. Military Judge: Steven J. Ehlenbeck (sitting alone).

Approved sentence: See opinion.

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 Gerald R. Bruce, Major Matthew S. Ward, and Major Donna S. Rueppell.

Before

FRANCIS, SOYBEL, and BRAND  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

We have examined the record of trial, the assignment of error raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and the government's reply thereto. The appellant asserts his sentence is inappropriately severe.

Before we decide that issue, we must resolve another. As addressed by the government in its brief, the action taken by the convening authority in this case was ambiguous. The action currently reads, "only so much of the sentence as provides for reduction to the grade of E-1 and 70 days confinement is approved and, except for the bad conduct discharge, will be executed." It is unclear from the quoted language whether the convening authority intended to approve the bad-conduct discharge.

The government submitted a post-trial affidavit from the convening authority in an attempt to clarify that he meant to approve the bad-conduct discharge at the time he took action. However, this affidavit contained a similar ambiguity. The affidavit reads, "I approved the sentence as adjudged which was reduction to the grade of E-1 and a bad conduct discharge. I did not, however, approve the three months of confinement and instead approved seventy (70) days of confinement and ordered the sentence to be executed." Here the convening authority misstates the adjudged sentence by leaving out the confinement portion. He then "clarifies" by re-stating the clemency portion of his action. Finally, he states specifically in his affidavit that he ordered the sentence (which included the bad-conduct discharge) to be executed. However, he did not have authority to order the bad-conduct discharge portion of the sentence to be executed. Article 71 (c)(1), UCMJ, 10 U.S.C. § 871(c)(1).

Rule of Courts-Martial 1107(g), which governs an "[i]ncomplete, ambiguous, or erroneous action," provides: "When the action of the convening . . . authority is incomplete, ambiguous, or contains clerical error, the authority who took the incomplete, ambiguous, or erroneous action may be instructed by [a reviewing] authority . . . to withdraw the original action and substitute a corrected action."

#### *Conclusion*

Pursuant to our authority under this provision, we return the record of trial to The Judge Advocate General for remand to the convening authority to withdraw the ambiguous action and substitute a corrected action and promulgating order. Thereafter, Article 66, UCMJ, 10 U.S.C. § 866, shall apply.

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STEVEN LUCAS, GS-11, DAF  
Clerk of Court