

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic IDELFONSO ESPINAL
United States Air Force**

ACM S29993

11 June 2002

Sentence adjudged 10 May 2001 by SPCM convened at Kadena Air Base, Okinawa, Japan. Military Judge: Kurt D. Schuman (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 5 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Jeffrey A. Vires, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major John D. Douglas.

Before
BURD, HEAD, and ROBERTS
Appellate Military Judges

PER CURIAM:

Appellant, through counsel, contends as an assignment of error that there is no addendum to the Staff Judge Advocate's Recommendation (SJAR) and there is no evidence that the convening authority either received or considered appellant's clemency submissions. While we find error, we find that the error is harmless and affirm. Article 59(a), UCMJ, 10 U.S.C. § 859(a).

Despite our previous published opinions addressing this point, most recently in *United States v. Baker*, 54 M.J. 774 (A.F. Ct. Crim. App. 2001), *pet. denied*, 55 M.J. 239 (2001), our review of the record indicates that the SJA did not prepare an addendum to the SJAR and that the convening authority did not initial the documents submitted by the defense to evidence that the convening authority had considered the appellant's clemency submissions.

What is submitted, inter alia, via a grant from this Court of a Motion to Submit Documents filed by appellee, is an affidavit from the convening authority, which provides, in pertinent part, that: “I personally read and considered all of the clemency matters presented to me by AB Espinal and his Defense Counsel, including AB Espinal’s undated memorandum addressed to me. After considering the SJAR and the clemency matters submitted by AB Espinal and his Defense Counsel, I took action on his sentence”

Our review of the affidavit submitted by convening authority convinces us that he both received and considered all clemency matters submitted by the appellant. While we are now able to conclude that no prejudice to the appellant’s substantial rights occurred in this case, we reiterate what we have stated in *Baker*, that the assignment of error concerns an easily avoidable dereliction of well-established and well-publicized procedures that if addressed by the SJA during case processing would have eliminated the necessity for appellate defense counsel to research and prepare a brief on the issue to this Court, appellate government counsel to expend resources to respond to the issue, including obtaining an affidavit from the convening authority, and the need for this Court to expend its judicial resources to consider this matter.

The approved findings of guilty and sentence are correct in law and fact. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings of guilty and the sentence are

AFFIRMED.

Judge HEAD did not participate.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator