

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JOHNNY L. FRANCISCO
United States Air Force

ACM 36773 (f rev)

06 January 2009

Sentence adjudged 11 May 2006 by GCM convened at Yokota Air Base, Japan. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 9 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, Major Lance J. Wood, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Matthew S. Ward, Lieutenant Colonel Robert V. Combs, Major Donna S. Rueppell, Major Amy E. Hutchens, and Major Carrie E. Wolf.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

UPON FURTHER REVIEW

This opinion is subject to editorial correction before final release.

PER CURIAM:

This case is before our Court for further review because the original Action was returned to the convening authority for correction pursuant to Rule for Courts-Martial 1107(g). *United States v. Francisco*, ACM 36773 (A.F. Ct. Crim. App. 4 Aug 2008)

(unpub. op.).¹ After approving the findings and sentence as correct in law and fact, and finding no error prejudicial to the substantial rights of the appellant, we returned the case to The Judge Advocate General for remand to the convening authority for a corrected Action, because the Action failed to reflect the convening authority's decision to defer automatic forfeitures until action. On 4 September 2008, a successor convening authority withdrew the prior Action and substituted a corrected Action.² On 9 October 2008, the record was returned to this Court for further review.

The appellant has submitted the record for further review without asserting any additional errors. Our further review discloses no substantive error. The approved findings and sentence 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 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, YA-02, DAF
Clerk of the Court

¹ The appellant was sentenced on 11 May 2006.

² We are mindful of our superior court's recent decision holding that the record of trial must contain evidence that "the successor convening authority communicated with the original convening authority and that the corrected action reflects the original convening authority's intent." *United States v. Mendoza*, 67 M.J. 53, 54 (C.A.A.F. 2008) (citing *United States v. Lower*, 10 M.J. 263, 265 (C.M.A. 1981)). Having already made a finding on the convening authority's intent regarding the deferment of automatic forfeitures, we are satisfied that such documentation is not required.