

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic JENNIFER A. GREEN
United States Air Force

ACM 36512

11 October 2007

Sentence adjudged 15 September 2005 by GCM convened at McChord Air Force Base, Washington. Military Judge: Print R. Maggard (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 16 months.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Donna S. Rueppell.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

At trial the appellant pled guilty and was found guilty of six charges and 16 specifications of a variety of offenses. One of the charged offenses was a charge of desertion in violation of Article 85, UCMJ, 10 U.S.C. § 885. The accused pled guilty to the offense of absence without leave in violation of Article 86, UCMJ, 10 U.S.C. § 886.

On appeal the appellant correctly notes, and the government concedes, that the military judge fails to specify in his announced findings for Additional Charge II that he finds the appellant only guilty of violating Article 86, UCMJ, vice the charged Article 85, UCMJ. It is clear from the record that this was an oversight. In announcing his findings to the single specification under Additional Charge II, the military judge found the

appellant not guilty of the words “and with intent to remain away therefrom permanently” and “in desertion” but guilty of the remaining words. At the same time however, the military judge announces the appellant guilty of Additional Charge II without specifying the relevant Article of the UCMJ.

During post trial processing the Staff Judge Advocate (SJA), in his recommendation, notes this oversight and advises the convening authority of the mistake. The SJA then advises the convening authority that the appellant is only guilty of violating Article 86, UCMJ not Article 85, UCMJ. Finally, the SJA advises the convening authority that he intends to correct this oversight in the action. However, this did not occur. The convening authority approved the sentence as adjudged without correcting the findings. This was error.

Therefore, we approve only so much of the finding to Additional Charge II as to reflect guilty to Article 86, UCMJ. For all the reasons stated above we believe that this error can be adequately corrected by the issuance of a new order without a new action. Therefore, we order the promulgation of a corrected Court-Martial Order, changing the findings to Additional Charge II to, not guilty of violating Article 85, UCMJ, but guilty to violating Article 86, UCMJ.¹

Reassessing the sentence, we are convinced beyond a reasonable doubt that the military judge would have awarded the same punishment regardless of the error. Furthermore, we find the sentence to be appropriate. *See United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990).

Conclusion

The findings, as amended, and the sentence, as reassessed, 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 findings, as amended, and the sentence, as reassessed, are

AFFIRMED.



STEVEN LUCAS, GS-11, DAF
Clerk of the Court

¹ We would also note that the order was signed for the commander over the heading, “Chief, Military Justice” in violation of Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 12.1 (26 November 2003).