

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class DERRIE K. HALE JR.
United States Air Force**

ACM S30374 (f rev)

28 October 2005

Sentence adjudged 13 March 2003 by SPCM convened at Grand Forks Air Force Base, North Dakota. Military Judge: Kurt D. Schuman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Mark R. Strickland, Major Terry L. McElyea, Major Jennifer K. Martwick, and Captain John N. Page III.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Lieutenant Colonel Michael E. Savage, and Captain C. Taylor Smith.

Before

MOODY, JOHNSON, and ZANOTTI
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

The appellant was tried by a special court-martial composed of a military judge sitting alone. Pursuant to his plea, the military judge found the appellant guilty of willful dereliction of duty, in violation of Article 92, UCMJ, 10 U.S.C. § 892. Contrary to his plea, the military judge also found him guilty of aggravated assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928. His sentence included a bad-conduct discharge, confinement for 5 months, and reduction to the grade of E-1. The military judge ordered the appellant receive 73 days of credit towards his confinement as a result of pretrial

confinement, 25 of those days as remedy for illegal pretrial punishment, in violation of Article 13, UCMJ, 10 U.S.C. § 813. *See* Rule for Courts-Martial (R.C.M.) 305(k). Contrary to R.C.M. 1107(f)(4)(F), the convening authority's action, dated 30 April 2003, was silent on the matter of illegal pretrial punishment credit. While we had no reason to believe the appellant suffered prejudice as a result of the omission regarding illegal pretrial punishment, we returned the record to The Judge Advocate General for remand to the convening authority to withdraw the action and to substitute a corrected action and promulgating order, consistent with R.C.M. 1107(g).

On 26 July 2005, the convening authority accomplished a new action and included the appropriate language crediting the appellant with 25 days for illegal pretrial punishment. On 3 August 2005, the record was returned to this Court for review under Article 66(c), UCMJ, 10 U.S.C. § 866(c). On appeal, the appellant acknowledged that the convening authority accomplished a new action, but did not assert any additional assignments of error.

Accordingly, 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). The approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court