

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JOSEPH R. HAMEL
United States Air Force**

ACM 36469

31 January 2007

Sentence adjudged 28 July 2005 by GCM convened at Altus Air Force Base, Oklahoma. Military Judge: Mary M. Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 1 year, forfeiture of all pay and allowances except only forfeiture of \$1,235.10 pay and allowances for the period of 30 September 2005 to 29 March 2006, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Anniece Barber.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Captain Donna S. Rueppell.

Before

**BROWN, BECHTOLD, and BRAND
Appellate Military Judges**

OPINION OF THE COURT

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of one specification of divers use of cocaine, one specification of divers use of methamphetamine, one specification of divers use of marijuana, one specification of divers distribution of cocaine, and one specification of use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. He was sentenced by a military judge, sitting as a general-court martial, to a bad-conduct discharge, confinement for 1 year, total forfeiture of all pay and allowances, and reduction to E-1.

The appellant does not challenge the findings and sentence of his court-martial. Instead, the appellant asserts that error occurred during the post-trial processing. The standard of review for determining whether post-trial processing was properly completed is de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)).

In the assigned error, the appellant alleges that the action is ambiguous in that it includes language after the approval of forfeitures which states “except only forfeiture of \$1,235.10 pay and allowances for the period of 30 September 2005 to 29 March 2006.” The appellant asks that the case be remanded to the convening authority for a new action or for other appropriate relief. The government concedes error and concurs that the action is ambiguous. The government recommends that we approve only so much of the sentence as provides for a bad-conduct discharge, confinement for 1 year, and reduction to E-1. Upon review of the entire record, including all post-trial processing documents, it appears that the intent of the convening authority was to provide financial relief for the benefit of the appellant’s dependents. The action, in what appears to be an attempt at suspension of adjudged forfeitures, does not achieve that intent. However, as the government has recommended, disapproval of adjudged forfeitures will effectuate the intent of the convening authority.

Additionally, although not raised by the appellant, the Court finds that the Court-Martial Order (CMO) incorrectly states that the appellant pled and was found guilty of two specifications of divers use of cocaine. In the case sub judice, the record is clear. The appellant was not charged with two specifications of use of cocaine on divers occasions, he pled guilty to one specification of divers use and one specification of a single use of cocaine. As part of her findings, the military judge found the appellant guilty of one specification of divers use and one specification of a single use of cocaine. The language “on divers occasions” in regards to Specification 5 of the Charge is erroneous and must be corrected.

Reassessing the sentence based on the error noted by the appellant, the entire record, and the principles in *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986), we affirm only so much of the sentence as provides for a bad-conduct discharge, confinement for 1 year, and reduction to E-1. Additionally, we order that the CMO be corrected as directed above.

The findings and the sentence, as reassessed, are correct in law and fact, and no other 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 and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator