UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic MATTHEW R. HOAGLAND
United States Air Force

ACM S30795

28 February 2006

Sentence adjudged 3 December 2004 by SPCM convened at Sheppard Air Force Base, Texas. Military Judge: Mary M. Boone (sitting alone).

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

Appellate Counsel for Appellant: Lieutenant Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major James M. Winner, and Captain John S. Fredland.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Tracey L. Printer.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have reviewed the record of trial, the appellant's assignment of error, and the government's reply thereto. Finding no error, we affirm.

The appellant complains that the staff judge advocate's recommendation (SJAR) did not highlight the military judge's opinion, expressed at trial, that the appellant could successfully complete the Air Force Return to Duty Program (RTDP). Though conceding that the military judge's comments were not an explicit recommendation for entry into the RTDP, the appellant contends that the SJAR should have made reference to them nonetheless.

We evaluate claims of error in post-trial processing de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004). In doing so, our threshold determination is whether there was, in fact, error; and if so, whether the error prejudiced the appellant. *United States v. Wheelus*, 49 M.J. 283, 288-89 (C.A.A.F. 1998). We are not convinced that threshold has been crossed in this case. Rule for Courts-Martial 1106(d)(3)(B) requires the SJAR to inform the convening authority of any "recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence." The military judge's opinion of the appellant's chances for success in the RDTP was not on its face a recommendation for entry into the program. On the contrary, the military judge later wrote that her practice "is not to make a recommendation on the record during trial," but rather to review the record and decide whether to make a recommendation post-trial. Thus, there was no recommendation for clemency made in conjunction with the announced sentence, and therefore, no error.

Moreover, any possible prejudice to the appellant was erased when, *after* the SJAR was prepared, the military judge decided to submit a letter with a formal recommendation for the appellant's entry into the RTDP. That letter was included with the appellant's clemency submission, and was quoted prominently in the defense counsel's letter requesting clemency. The convening authority initialed both the military judge's letter and the letter from the appellant's counsel, signifying he read them prior to taking action. We are therefore satisfied that the convening authority was aware of the appellant's desire to be entered into the RTDP and the military judge's post-trial recommendation that he be granted entry.

The convening authority decided not to make use of his discretion to grant the requested clemency, but he was under no obligation to do so, and we decline to impose one. *See United States v. Catalani*, 46 M.J. 325, 329 (C.A.A.F. 1997) (convening authority's discretion in clemency is "broad" and "virtually unfettered"). Even assuming an error in the SJAR, we can discern no prejudice to the appellant, and find no basis for relief. *See Wheelus*, 49 M.J. at 289.

The 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 findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court