

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Staff Sergeant TIMOTHY D. HOYER**  
**United States Air Force**

**ACM S31226**

**11 April 2007**

Sentence adjudged 9 November 2006 by SPCM convened at Travis Air Force Base, California. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 8 months, and reduction to E-1.

Appellate Counsel for Appellant: Declined representation by counsel.

Before

**BROWN, FRANCIS, and SOYBEL**  
Appellate Military Judges

PER CURIAM:

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

**LOUIS T. FUSS, TSgt, USAF**  
Chief Court Administrator

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\* Charge III and its Specification allege an offense of indecent assault, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Consistent with his plea, the appellant was found not guilty of the charged offense, but guilty of the lesser included offense (LIO) of assault consummated by a battery, in violation of Article 128, UCMJ, 10 U.S.C. § 928. Despite that, the record indicates the military judge, in announcing findings to Charge III, found the appellant “guilty” of that charge. Whether this is a transcription error or the military judge simply misspoke, it is clear from the record as a whole that the judge found the appellant guilty of the LIO. The staff judge advocate’s recommendation and the promulgating order both correctly note that finding. Accordingly, we find no prejudice to the appellant.