

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

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**UNITED STATES**

**v.**

**First Lieutenant GARY M. HUBBARD  
United States Air Force**

**ACM 35758**

**15 August 2005**

Sentence adjudged 24 September 2003 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: John J. Powers.

Approved sentence: Dismissal.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, and Captain Diane M. Paskey.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major James K. Floyd.

Before

**BROWN, ORR, and MOODY  
Appellate Military Judges**

**PER CURIAM:**

We have examined the record of trial, the assignments of error, including the one submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and the government's reply thereto. We conclude that the Secretary of the Air Force did not divest the Commander of the Ninth Air Force (Provisional) (9AF(P)/CC) of authority to convene general courts-martial. See *United States v. Hardy*, 60 M.J. 620 (A.F. Ct. Crim. App. 2004), *pet. denied*, 60 M.J. 459 (C.A.A.F. 2005). Therefore, we hold that 9 AF(P)/CC could properly take action in the case sub judice and thus, the appellant is not entitled to have the findings and sentence set aside. As to the second assignment of error, the sentence adjudged and approved is not inappropriately severe. *United States v. Healy*, 26 M.J. 394 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982).

We conclude that 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). On the basis of the entire record, the findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF  
Chief Court Administrator