

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman ANTONIO M. JACKSON
United States Air Force

ACM S31195

31 May 2007

Sentence adjudged 13 July 2006 by SPCM convened at Kunsan Air Base, Republic of Korea. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Raymond J. Hardy, Jr., Lieutenant Colonel Mark R. Strickland, Major Anniece Barber, and Captain Timothy M. Cox.

Appellate Counsel for the United States: Colonel Gerald R. Bruce.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

PER CURIAM:

This case was submitted for review on its merits; however, we find error in the action of the convening authority.¹

By memorandum dated 9 August 2006, the convening authority, pursuant to Article 58b, UCMJ, 10 U.S.C. § 858b, purported to waive all mandatory forfeitures until the sooner of the appellant's release from confinement or 6 months from the date of action, with the money to be paid to the appellant's spouse. The convening authority's action, completed on 2 October 2006, does not reflect that decision, and we find nothing in the record indicating a subsequent decision to the contrary.

¹ In addition, we note that contrary to Rule for Courts-Martial 1106(d)(3)(E), the staff judge advocate's recommendation neglected to advise the convening authority of the terms and impact of the appellant's pretrial agreement. Given the terms of that agreement and the adjudged sentence, however, we find no prejudice arising from this error.

The plain language of Article 58b, UCMJ, indicates that waiver of mandatory forfeitures is accomplished by the convening authority “acting under section 860 of this title”.² Article 58b(b), UCMJ. As a result, to be effective, the convening authority’s waiver must be clearly and unambiguously set forth in the action. *See United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002); Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 9.8.4 (26 Nov 2003). The action in this case is defective in that it does not capture the convening authority’s intended waiver.

The record of trial is returned to The Judge Advocate General for remand to the appropriate convening authority for a new action. Thereafter, Article 66(c), UCMJ, 10 U.S.C. § 866(c), shall apply.

OFFICIAL

MARTHA E. COBLE-BEACH, TSgt, USAF
Court Administrator

² Article 60, UCMJ, 10 U.S.C. § 860.