

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic JAMES M. KERR
United States Air Force

ACM S31337

28 February 2008

Sentence adjudged 23 May 2007 by SPCM convened at Dover Air Force Base, Delaware. Military Judge: Jennifer Whittier.

Approved sentence: Bad-conduct discharge and confinement for 3 months.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Phillip T. Korman.

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

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

The appellant was sentenced to 90 days confinement; however, the convening authority approved confinement for a term of three months. Although the appellant alleges no prejudice, we take judicial notice that three months of confinement, as approved by the convening authority, would amount to more than the 90 days of confinement that was originally adjudged. Pursuant to Rule for Courts-Martial 1107 (b)(5), the convening authority may not increase the punishment imposed by the court-martial. Therefore, we approve only so much of the sentence that includes a bad-conduct discharge and confinement for 90 days.

The findings, and sentence as reassessed, 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, as reassessed, are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF
Clerk of the Court