

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class MICHAEL T. KERR
United States Air Force

ACM 37538

12 April 2010

Sentence adjudged 29 July 2009 by GCM convened at Misawa Air Base, Japan. Military Judge: Mark L. Allred (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 15 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Andrew J. Unsicker.

Appellate Counsel for the United States: Colonel Douglas P. Cordova and Lieutenant Colonel Jeremy S. Weber.

Before

BRAND, HELGET, and GREGORY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

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).

* We note the staff judge advocate's recommendation overstates the maximum confinement by four years – 32 years and 6 months instead of the correct 28 years and 6 months. The discrepancy occurred because the military judge found the appellant guilty of conspiracy to damage property of some value rather than of a value of more than \$500, as charged. The error is waived and we find no plain error requiring corrective action. Rules for Courts-Martial 1106(d)(6) and (f)(6); *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000).

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



Christina E. Parsons
CHRISTINA E. PARSONS, TSgt, USAF
Deputy, Clerk of the Court