

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Staff Sergeant TYLER P. KNOX
United States Air Force**

ACM 35888

31 January 2006

Sentence adjudged 5 February 2004 by GCM convened at Vandenberg Air Force Base, California. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Lieutenant Colonel Robin S. Wink, Major Andrew S. Williams, Major Sandra K. Whittington, and Captain David P. Bennett.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Clayton O'Connor (legal intern).

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

The appellant was tried by a military judge alone sitting as a general court-martial at Vandenberg Air Force Base, California. Pursuant to the appellant's pleas, he was found guilty of one specification of wrongful use of cocaine and one specification of wrongful use of methamphetamine, both in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.¹ The military judge sentenced the appellant to a bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the findings and sentence as adjudged.² On appeal,

¹ Pursuant to the pretrial agreement between the appellant and the convening authority, the military judge dismissed with prejudice an additional specification alleging wrongful use of methamphetamine.

² The pretrial agreement limited confinement to 13 months and had no effect on the sentence.

the appellant alleges the staff judge advocate (SJA) did not properly advise the convening authority of his options concerning the Return to Duty Program (RTDP).

In the appellant's clemency submission to the convening authority he requested to be placed in the RTDP. He provided the convening authority with a comprehensive description of the RTDP.³ In the addendum to the staff judge advocate's recommendation (SJAR), the SJA advised the convening authority that he *must* consider the matters submitted by the defense prior to taking action. The SJA also attached to the addendum the matters submitted by the defense and listed them as attachments to the addendum. The SJA did not specifically advise the convening authority concerning the appellant's request for entry into the RTDP and what options the convening authority had regarding that request. Prior to the convening authority taking action in the case, he signed a memorandum in which he indicated he considered the SJAR, the matters submitted by the defense, and the addendum.

The SJAR and the addendum are governed by Rules for Courts-Martial 1106 and 1107. Pursuant to these rules, the SJA was under no additional duty to comment or further explain the appellant's request to be entered into the RTDP. *United States v. Foy*, 30 M.J. 664, 665-66 (A.F.C.M.R. 1990); *United States v. Mulray*, ACM S30410 (A.F. Ct. Crim. App. 28 Mar 2005) (unpub. op.), *pet. denied*, 61 M.J. 331 (C.A.A.F. 2005). The SJA's advice to the convening authority was correct. No error was committed.

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

ANGELA M. BRICE
Clerk of Court

³ The defense did not raise any legal errors in their clemency submission.