

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Staff Sergeant MATTHEW T. LAWYER**  
**United States Air Force**

**ACM 37347**

**23 April 2009**

Sentence adjudged 18 September 2008 by GCM convened at Hurlburt Field, Florida. Military Judge: W. Thomas Cumbie (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 60 days, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Major Lance J. Wood, Major Imelda L. Paredes, and Captain Marla J. Gillman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, Captain Ryan N. Hoback, and Captain Jason M. Kellhofer.

Before

HEIMANN, HELGET, and PLACKE  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of one specification each of wrongfully distributing approximately two tablets of hydrocodone,<sup>1</sup> wrongfully using hydrocodone, and wrongfully possessing 27 tablets of hydrocodone, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The approved sentence consists of a bad-conduct discharge, confinement for 60 days, and reduction to E-1.

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<sup>1</sup> Hydrocodone is a Schedule III controlled substance.

On appeal the appellant asks this Court to set aside the Action and order new post-trial processing because the convening authority did not receive his entire clemency submission. Specifically, the convening authority never received Defense Exhibits Z and AA, consisting of the appellant's unsworn statement and a character letter. Finding no error, we affirm.<sup>2</sup>

### *Consideration of Clemency Matters*

We review post-trial processing issues de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)). Prior to taking final action, the convening authority must consider clemency matters submitted by the accused. *United States v. Craig*, 28 M.J. 321, 324-25 (C.M.A. 1989); Rule for Courts-Martial 1107(b)(3)(A)(iii). The preferred method of documenting a convening authority's review of clemency submissions is completion of an addendum to the staff judge advocate's recommendation (SJAR). *United States v. Godreau*, 31 M.J. 809, 811 (A.F.C.M.R. 1990).

The addendum should: (1) inform the convening authority that the accused has submitted matters and that they are attached to the addendum; (2) inform the convening authority that he must consider the matters submitted by the accused before taking action on the case; and (3) list as attachments the matters submitted by the accused. *Id.* (citing *United States v. Foy*, 30 M.J. 664, 665 (A.F.C.M.R. 1990)).

On 30 October 2008, the trial defense counsel submitted a petition for clemency, with three attachments: (1) a letter from the appellant; (2) "Sentencing Exhibits;" and (3) an article on post-traumatic stress disorder. Although Attachment 2 of the clemency petition lists "Sentencing Exhibits," the sentencing exhibits were not specifically identified and the index to the sentencing exhibits (Exhibit A) only lists Exhibits A to Y. Subsequently, the addendum to the SJAR forwarded to the convening authority only included Exhibits A to Y and did not include Exhibits Z and AA.

Upon receipt of the appellant's brief, the appellee submitted a declaration from Master Sergeant (MSgt) BS, Law Office Manager for Air Force Special Operations Command, Hurlburt Field, Florida. In his declaration, dated 12 March 2009, MSgt BS asserts that his office received the appellant's clemency submission on or about 31 October 2008. Included in the submission was the petition for clemency from the trial defense counsel and the three attachments identified above. MSgt BS specifically states in his declaration that his office never received Exhibits Z and AA, which is why they were not attached to the addendum to the SJAR that was forwarded to the convening authority. In a post-trial declaration submitted by Captain (Capt) MM, the trial defense

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<sup>2</sup> Although not affecting the legal sufficiency of the findings or sentence, the court-martial order erroneously states the appellant's rank as "Senior Airman" vice "Staff Sergeant." We order the promulgation of a corrected court-martial order.

counsel, he states that his normal practice is to submit all sentencing documents as part of the clemency package. However, in this case, Captain MM does not specifically remember whether or not he submitted Exhibits Z and AA.

Considering the post-trial declarations from MSgt BS and Capt MM along with the other post-trial submissions, we find that the appellant's clemency submission did not include Defense Exhibits Z and AA and that the convening authority received and considered all of the documents submitted by the appellant prior to taking action in this case.<sup>3</sup>

### *Conclusion*

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



STEVEN LUCAS, YA-02, DAF  
Clerk of the Court

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<sup>3</sup> In light of our finding that the appellant's clemency submission did not include Defense Exhibits Z and AA, we examined whether or not the appellant received ineffective assistance of counsel in this case. Although the reason for the omission is unclear, we are convinced the appellant was not prejudiced by the omission of the exhibits. The appellant's personal statement submitted with his clemency petition included the essential information from his unsworn statement, especially as it related to his deployment history. Further, the missing character statement did not provide any pertinent information not included in the other character letters submitted with the clemency petition.