

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class MATTHEW H. LEBER
United States Air Force**

ACM S30241 (f rev)

8 August 2006

Sentence adjudged 10 July 2002 by SPCM convened at Edwards Air Force Base, California. Military Judge: Bryan T. Wheeler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of \$500.00 pay per month for 8 months, except forfeitures of \$236.00 pay per month for the period 24 July 2002 to 10 October 2002, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Lieutenant Colonel Mark R. Strickland, Lieutenant Colonel Andrew S. Williams, Major Terry L. McElyea, Major Antony B. Kolenc, Major Sandra K. Whittington, and Captain John S. Fredland.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major John C. Johnson, and Major Michelle M. McCluer.

Before

ORR, FRANCIS, and SOYBEL
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

A military judge sitting alone as a special court-martial found the appellant guilty, in accordance with his pleas, of willfully damaging military property, two specifications of illegal drug use, and one specification of assault consummated by a battery, in violation of Articles 108, 112a, and 128, UCMJ, 10 U.S.C. §§ 908, 912a, 928. The military judge sentenced the appellant to a bad-conduct discharge, confinement for 8 months, forfeiture of \$500.00 pay per month for 8 months, and reduction to E-1. The convening authority reduced

the amount of confinement to 6 months, and forwarded the record for review by this Court under Article 66(c), UCMJ, 10 U.S.C. § 866(c).

On 17 August 2004, this Court returned the record of trial to The Judge Advocate General (TJAG) for remand to the convening authority because we determined that the convening authority's action was ambiguous. *United States v. Leber*, ACM S30241 (A.F. Ct. Crim. App. 17 Aug 2004) (unpub. op.). On 1 March 2005, the convening authority completed a new action approving the original sentence but modifying the forfeitures. The new action excluded \$236.00 pay per month of the adjudged forfeitures and deferred the adjudged forfeitures from 24 July 2002-10 December 2002. Additionally, the convening authority waived the automatic forfeitures for the sooner of six months or release of confinement for the use and benefit of the appellant's spouse and two dependent children.

On 20 September 2005, this Court again returned the record of trial to TJAG for remand to the convening authority for new post-trial processing because the staff judge advocate did not serve a copy of the staff judge advocate's recommendation on the appellant. *United States v. Leber*, ACM S30241 (A.F. Ct. Crim. App. 20 Sep 2005) (unpub. op.). On 10 April 2006, the convening authority rescinded the 1 March 2005 action and completed a new action approving the previous sentence. Thereafter, the convening authority forwarded the record for review by this Court under Article 66(c), UCMJ.

The appellant submitted the record for further review without asserting any additional assignments of error. 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator