

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class ROBERT B. MALONE
United States Air Force**

ACM S30118

16 April 2004

Sentence adjudged 5 April 2002 by SPCM convened at Keesler Air Force Base, Mississippi. Military Judge: Mary M. Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, forfeiture of \$500.00 pay per month for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Maria A. Fried.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major John D. Douglas.

Before

**BRESLIN, ORR, and GENT
Appellate Military Judges**

PER CURIAM:

The appellant assigns two errors pursuant to *United States v. Grostefon*, 12 M.J. 431, 436 (C.M.A. 1982). The appellant first asserts that the military judge erred in denying his motion for credit for illegal pretrial punishment. We have examined the record of trial, documents submitted by the appellant, the assignment of errors, and the government's reply thereto. We find this issue is without merit.

The appellant next alleges that the trial defense counsel was ineffective because he failed to submit a timely request that the convening authority waive forfeitures under Article 58b(b), UCMJ, 10 U.S.C. § 858b(b). The government concedes this error. We also agree. Accordingly, the action of the convening authority is set aside.

The record of trial is returned to The Judge Advocate General for a new action by the same or a different convening authority in accordance with Article 60, UCMJ, 10 U.S.C. § 860.

OFFICIAL

FELECIA M. BUTLER
Chief Court Administrator