

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class CHAD R. MCCLELLAND-HALL
United States Air Force**

ACM 38258 (recon)

17 June 2014

Sentence adjudged 7 November 2012 by GCM convened at Tinker Air Force Base, Oklahoma. Military Judge: Grant L. Kratz (sitting alone).

Approved Sentence: Bad-conduct discharge, confinement for 20 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Zaven T. Saroyan.

Appellate Counsel for the United States: Colonel Don M. Christensen.

Before

ALLRED, MARKSTEINER, and MITCHELL
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

On 25 January 2013, The Judge Advocate General of the Air Force appointed Mr. Laurence M. Soybel to the position of appellate military judge on the United States Air Force Court of Criminal Appeals pursuant to Article 66(a), UCMJ, 10 U.S.C. § 866(a). At the time of this appointment, Mr. Soybel, a retired Air Force officer and former appellate military judge, was serving as a civilian litigation attorney in the Department of the Air Force. On 25 June 2013, the Secretary of Defense, “[p]ursuant to [his] authority under title 5, United States Code, section 3101 et seq.,” issued a memorandum that “appoint[ed] Mr. Laurence M. Soybel, a civilian employee of the Department of the Air Force, to serve as appellate military judge on the Air Force Court of Criminal Appeals.” Memorandum from Sec’y of Def. Chuck Hagel for Sec’y of the Air Force Eric Fanning (25 June 2013).

On 19 August 2013, we approved the findings and sentence in the appellant's case. *United States v. McClelland-Hall*, ACM 38258 (A.F. Ct. Crim. App. 19 August 2013) (unpub. op.). The appellant then petitioned the Court of Appeals for the Armed Forces for review. On 31 October 2013, our superior court converted the appellant's motion to vacate into a motion for reconsideration. *United States v. McClelland-Hall*, 73 M.J. 91 (C.A.A.F. 2013) (mem.). On 19 December 2013, our superior court granted review of *United States v. Janssen*, ACM 37681 (A.F. Ct. Crim. App. 18 July 2014) (unpub. op.), on the issue of whether Mr. Soybel was properly appointed by the Secretary of the Air Force to sit on the Air Force Court of Criminal Appeals. *United States v. Janssen*, 73 M.J. 136 (Daily Journal 19 December 2013). On 15 April 2014, our superior court issued its decision, ruling that the Secretary of Defense did not have the legislative authority to appoint appellate military judges, and his appointment of Mr. Soybel to this court was "invalid and of no effect." *United States v. Janssen*, 73 M.J. 221, 225 (C.A.A.F. 2014).

In light of *Janssen*, we have granted the motion for reconsideration in this matter and, with a properly constituted panel, have conducted a review of the appellant's case consistent with Article 66(c), UCMJ, 10 U.S.C. § 866. We have also reviewed the prior opinion in this case issued on 19 August 2013 and reached the same conclusion. We affirm the findings and sentence in this matter.

The approved findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.



FOR THE COURT


STEVEN LUCAS
Clerk of the Court