

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant DANIEL J. MCCOY
United States Air Force

ACM S31111

29 November 2006

Sentence adjudged 11 April 2006 by SPCM convened at Offutt Air Force Base, Nebraska. Military Judge: Barbara G. Brand (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Timothy M. Cox.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Major Kimani R. Eason.

Before

BROWN, SCHOLZ, and BECHTOLD
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of one specification of larceny, in violation of Article 121, UCMJ, 10 U.S.C. § 921. His approved sentence consists of a bad-conduct discharge, confinement for 4 months, and reduction to E-1.

On appeal, he contends that he is entitled to new post-trial processing because there is no evidence in the record that the convening authority reviewed his clemency matters as required by Rule for Courts-Martial 1107(b)(3)(A)(iii). Although the convening authority signed a memorandum stating that he “reviewed and considered the presented matters before taking action on this case,” there is nothing in his memorandum to indicate what matters were presented for his review

and consideration. Additionally, there is no addendum to the staff judge advocate's recommendation that might clarify what those matters were. The government responded by supplementing the record with affidavits from the convening authority and an assistant staff judge advocate, establishing that the convening authority did, in fact, consider the appellant's clemency package, in the assistant staff judge advocate's presence, prior to taking action. We are satisfied that the convening authority properly reviewed the appellant's clemency matters. *See United States v. Godreau*, 31 M.J. 809, 812 (A.F.C.M.R. 1990).

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 findings and sentence are

AFFIRMED.

OFFICIAL

JEFFREY L. NESTER
Clerk of Court