

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman DARIUS M. MCGEE
United States Air Force**

ACM S32130

22 October 2013

Sentence adjudged 25 February 2013 by SPCM convened at Beale Air Force Base, California. Military Judge: Jill M. Thomas (sitting alone).

Approved Sentence: Bad conduct discharge, confinement for 30 days, forfeiture of \$1010.00 pay for 30 days, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Jeffrey A. Davis.

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

Before

**ROAN, MARKSTEINER and WIEDIE
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.¹

¹We note the military judge initially announced the forfeiture portion of the appellant's sentence as "forfeiture of two-thirds pay for thirty days." Recognizing there was an error in the form of the sentence, a proceeding in revision, pursuant to Rule for Courts-Martial 1102, was held four days after the court closed. At this post-trial session, the military judge stated the forfeiture portion of the sentence as "forfeiture of \$1010 pay for thirty days." While the military judge corrected one error (failing to state the forfeiture in a whole dollar amount), she failed to correct another (stating the length of the forfeiture in the number of days rather than months it was to last). See Rule for Courts-Martial 1003(b)(2). Although we find the form of the sentence, as it relates to forfeitures, to be erroneous, we find the appellant was not prejudiced. Thirty days is commonly understood to be a month and the intent of the military judge with respect to the length of time the forfeitures were to run was clear. Additionally, the appellant is not prejudiced because the rest of his sentence triggers, pursuant to Article 58b, UCMJ, the automatic forfeiture of two-thirds of his pay for the period of his confinement, which is 30 days.

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.



FOR THE COURT


STEVEN LUCAS
Clerk of the Court