

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Senior Airman JUSTIN D. MILLER**  
**United States Air Force**

**ACM S30659 (f rev)**

**28 March 2007**

Sentence adjudged 14 May 2004 by SPCM convened at McGuire Air Force Base, New Jersey. Military Judge: Kevin P. Koehler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 8 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Terry L. McElyea, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Matthew S. Ward, Major Steven R. Kaufman, Major Michelle M. McCluer, and Captain Donna S. Rueppell.

Before

**BROWN, JACOBSON, and SCHOLZ**  
Appellate Military Judges

**UPON FURTHER REVIEW**

**PER CURIAM:**

This case is before our Court for further review because the original action was set aside. *United States v. Miller*, ACM S30659 (A.F. Ct. Crim. App. 20 Sep 2005) (unpub. op.). This Court returned the case to The Judge Advocate General for remand to the convening authority for new post-trial review and action because the original staff judge advocate's recommendation (SJAR) was authored by the trial counsel, in violation of Article 6(c), UCMJ, 10 U.S.C. § 806(c). On 16 June 2006 a new SJAR was completed,

followed by a new addendum on 15 August 2006. No new clemency matters were submitted by the appellant, and on 23 August 2006 the convening authority completed a new action that approved the findings and sentence as adjudged and waived \$795.00 pay per month for 6 months for the benefit of the appellant's dependents.\*

The case is now before this Court for further review, and the appellant asserts two assignments of error. He first asserts that a new post-trial processing should be ordered because there is no evidence that he was properly served with the new post-trial materials and given an opportunity to respond. We find this assignment of error to be without merit. On 20 March 2007, government appellate counsel moved to supplement the record with the new SJAR and receipts of service. The appellant did not oppose the motion, and it was granted. The first receipt was signed by the appellant's defense counsel's paralegal on 16 June 2006. The second receipt is signed by the appellant himself, indicating that he received the SJAR on 16 June 2006. Also appearing on the appellant's version of the receipt is an indication by the appellant that he did not intend to submit matters in clemency. We therefore find the appellant was properly served with the SJAR and given an opportunity to respond.

The appellant next asserts that new post-trial processing should be ordered because "the Staff Judge Advocate's legal advice to the Convening Authority regarding appellant's deferment request mischaracterized appellant's request and improperly advised the Convening Authority of his options." After carefully examining all of the post-trial paperwork in the appellant's case, we find this assignment of error to be without merit as well. *United States v. Key*, 57 M.J. 246, 248-49 (C.A.A.F. 2002); *United States v. Brown*, 54 M.J. 289, 292-93 (C.A.A.F. 2000); *United States v. Chatman*, 46 M.J. 321, 323 (C.A.A.F. 1997); *United States v. Matich*, ACM 34607 (A.F. Ct. Crim. App. 25 Apr 2003) (unpub. op.).

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator

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\* Pursuant to Article 58b, UCMJ, 10 U.S.C. § 858b.