

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

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**UNITED STATES**

**v.**

**Airman ALEXIS ORTIZ  
United States Air Force**

**ACM S31104**

**26 March 2007**

Sentence adjudged 17 March 2006 by SPCM convened at Shaw Air Force Base, South Carolina. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of \$849.00 pay per month for 6 months, and reduction to E-1.

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

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Kimani R. Eason.

Before

**BROWN, BECHTOLD, and BRAND  
Appellate Military Judges**

**PER CURIAM:**

The appellant was convicted, in accordance with his pleas, of one specification of wrongful possession of marijuana, and two specifications of divers wrongful uses of marijuana, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.\* His approved sentence consists of a bad-conduct discharge, confinement for 6 months, forfeiture of \$849.00 pay per month for 6 months, and reduction to E-1.

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\* The appellant was acquitted of one specification of making a false official statement in violation of Article 107, UCMJ, 10 U.S.C. § 907.

The appellant submitted a clemency package requesting a reduction in confinement time and disapproval of the punitive discharge. There was no addendum to the staff judge advocate recommendation (SJAR). The appellant avers error because there is no addendum and there is no evidence the convening authority either received or considered the appellant's clemency petition. In response to the error raised by the appellant, the government provided two affidavits, one from the staff judge advocate (SJA) and one from the convening authority.

We review post-trial processing issues de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). Prior to taking final action, the convening authority must consider clemency matters submitted by the accused under Rule for Courts-Martial (R.C.M.) 1105. See R.C.M. 1107(b)(3); *United States v. Craig*, 28 M.J. 321, 324-25 (C.M.A. 1989). The SJA did not prepare an addendum to her recommendations. Consequently, she did not follow the procedures we set out in *United States v. Foy*, 30 M.J. 664, 665-66 (A.F.C.M.R. 1990). In *United States v. Godreau*, 31 M.J. 809, 811-12 (A.F.C.M.R. 1990), we held that two conditions must be met to comply with *Craig* when an appellant has properly submitted clemency matters but no addendum is prepared. First, the convening authority must be advised in the post-trial recommendation that he is required to consider all matters submitted by the accused. *Id.* Second, there must be some means to determine that all matters submitted by the appellant were in fact considered by the convening authority. *Id.* at 812. The method approved in *Godreau* requires the convening authority to initial and date each item submitted by the appellant and his counsel. Failing this, the convening authority is required to submit an affidavit verifying he actually considered the appellant's submissions. *Id.* The record now contains two affidavits, one from the SJA and one from the convening authority. We find, as a matter of fact, the convening authority considered the appellant's clemency submission prior to taking action.

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

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator