

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Captain WALTER M. PLUSH
United States Air Force

ACM 35134 (f rev)

13 January 2006

Sentence adjudged 25 January 2002 by GCM convened at Ellsworth Air Force Base, South Dakota. Military Judge: Mark R. Ruppert.

Approved sentence: Dismissal, confinement for 5 months, and forfeiture of \$2,432.00 pay per month for 5 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Major Terry L. McElyea, Major Patricia A. McHugh, Major Sandra K. Whittington, Major James M. Winner, Captain Diane M. Paskey, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, Lieutenant Colonel Jennifer R. Rider, and Lieutenant Colonel Gary F. Spencer.

Before

STONE, ORR, and MOODY
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. Plush*, ACM 35134 (A.F. Ct. Crim. App. 21 Sep 2004) (unpub. op.). This court returned the case to The Judge Advocate General for remand to the convening authority for a new action in light of the decision in *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). On 3 January 2005, the convening authority completed a new action to comply with *Emminizer*, waiving the automatic forfeiture of all pay and allowances for six months for the benefit of the appellant's wife and

suspending the adjudged forfeitures for six months, at which time, unless the suspension was sooner vacated, it was remitted without further action.

Noting that the sentence adjudged was only forfeiture of \$2,432.00 pay per month for five months, this Court again remanded the case back to the convening authority to complete a new action. On 4 October 2005, the convening authority completed a new action and the case was forwarded to this Court for review on 19 October 2005.

The appellant submitted the record and new action for further review on its merits. Our review discloses no substantive error. 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

ANGELA M. BRICE
Clerk of Court