UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman SEAN M. REGAN
United States Air Force

ACM S30965

15 September 2006

Sentence adjudged 9 August 2005 by SPCM convened at Charleston Air Force Base, South Carolina. Military Judge: W. Thomas Cumbie (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

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

Appellate Counsel for the United States: Colonel Gary F. Spencer and Lieutenant Colonel Robert V. Combs.

Before

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his plea, of one specification of wrongful use of cocaine on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A military judge sitting as a special court-martial sentenced the appellant to a bad-conduct discharge, confinement for eight months, and reduction to E-1. The convening authority approved the findings of guilty and the sentence as adjudged, except she reduced the period of confinement to seven months in accordance with a pretrial plea agreement entered into between the parties. The appellant now claims that he is entitled to meaningful sentence relief or a new post-trial review because the record of trial does not demonstrate that the convening authority received and considered the defense clemency

submissions, as required by *United States v. Craig*, 28 M.J. 321, 325 (C.M.A. 1989).

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 (C.A.A.F. 2000)). Prior to taking final action, the convening authority must consider clemency matters submitted by the accused. Rule for Courts-Martial 1107(b)(3)(A)(iii); *Craig*, 28 M.J. at 325.

In this case, the staff judge advocate (SJA) did not prepare an addendum to his recommendation. Consequently, he 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); however, the clemency submissions are included within the record of trial. In similar circumstances, we have allowed the government to supplement the record. *See United States v. Godreau*, 31 M.J. 809, 810 (A.F.C.M.R. 1990); *United States v. Blanch*, 29 M.J. 672, 673 (A.F.C.M.R. 1989).

By separate motion, the government submitted an affidavit from the SJA. The affidavit states that the SJA specifically remembers providing the clemency matters to the convening authority for her consideration and observing her review the clemency matters and the record of trial. Considering this affidavit from the SJA, we are satisfied that although there is no addendum to the SJA's recommendation, the convening authority properly considered the appellant's clemency submissions before taking action in this case.

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

LAQUITTA J. SMITH
Documents Examiner