

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Master Sergeant PAUL R. RICHARDSON
United States Air Force

ACM 36789

13 September 2007

Sentence adjudged 8 March 2006 by GCM convened at Osan Air Base, Republic of Korea. Military Judge: Eric L. Dillow.

Approved sentence: Confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Chadwick A. Conn.

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

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was found guilty of making a false official statement and larceny in violation of Articles 107 and 121, UCMJ, 10 U.S.C. §§ 907, 921. A panel of officers sentenced the appellant to a bad-conduct discharge, confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved only so much of the sentence as provides for confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1; he waived all automatic forfeitures for a period of 6 months for the benefit of the appellant's ex-wife and his minor children.

We have examined the record of trial, the assignment of error, and the government's reply thereto. On appeal, the appellant contends that the convening authority's action did not follow the proper format for waiver of mandatory forfeitures as required by *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). The government concedes.

The convening authority ordered that mandatory forfeitures under Article 58b, UCMJ, 10 U.S.C. § 858b, be waived for a period of up to six months and paid to the appellant's family, but did not modify the adjudged forfeiture of all pay and allowances. This action does not meet the requirements of *Emminizer*, 56 M.J. at 445, and, if left uncorrected, could create a liability for future recoupment action against the appellant or his dependents. See *United States v. Lajauni*, 60 M.J. 280, 281 (C.A.A.F. 2004). We can eliminate that possibility, however, and cure the error at our level by disapproving the adjudged forfeitures. *United States v. Johnson*, 62 M.J. 31, 38 (C.A.A.F. 2005). We therefore reassess the sentence and approve only so much as provides for confinement for 18 months and reduction to the grade of E-1.

Conclusion

The findings and sentence, as reassessed, 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); See *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence, as reassessed, are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF
Clerk of Court