UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ROBERT A. ROBLES
United States Air Force

ACM S31069

6 February 2007

Sentence adjudged 19 December 2005 by SPCM convened at Kirtland Air Force Base, New Mexico. Military Judge: James B. Roan (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, forfeiture of 2/3 pay for 9 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, Lieutenant Colonel Robert V. Combs, and Major Nurit Anderson.

Before

BROWN, BECHTOLD, and BRAND
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of one specification each of conspiracy to commit disorderly conduct, larceny, assault consummated by a battery, and disorderly conduct in violation of Articles 81, 121, 128, and 134, UCMJ, 10 U.S.C. §§ 881, 921, 928, 934. He was sentenced by a military judge, sitting alone as a special court-martial, to a bad-conduct discharge, confinement for 9 months, forfeiture of 2/3 pay for 9 months, and reduction to E-1. The convening authority approved the findings and sentence as adjudged.

The appellant does not challenge the findings of his court-martial, and we find them correct in both law and fact. *See* Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United*

States v. Reed, 54 M.J. 37, 41 (C.A.A.F. 2000). Instead, the appellant alleges two errors, one during sentencing and one during the clemency phase of his court-martial. We concur with the appellant on the first assigned error, but find no merit in the second assigned error.

The first assigned error occurred when the military judge sentenced the appellant "to forfeit 2/3rds of your pay for 9 months". This sentence contains two errors: it fails to state a whole dollar amount as required by Rule for Courts-Martial (R.C.M.) 1003(b)(2), and it omits the language "per month". The government concurs this was error. As noted by both the appellant and the government, the remedy is corrective action by this Court to affirm a forfeiture of $823.00[1] for one month. *United States v. Roman*, 46 C.M.R. 78, 82 (C.M.A. 1972) (citing *United States v. Johnson*, 32 C.M.R. 127 (C.M.A. 1962)); *United States v. Rokey*, 62 M.J. 516, 517 (Army Ct. Crim. App. 2005); *United States v. Burkett*, 57 M.J. 618, 621 (C.G. Ct. Crim. App. 2002). We will correct the sentence in our decretal paragraph.

The appellant's second allegation of error concerns language in the staff judge advocate's recommendation (SJAR) that states that the maximum confinement imposable was 20 months.[2] The appellant contends that this was error because the maximum imposable sentence to confinement was 12 months, the jurisdictional limits of a special court-martial. The defense counsel did not comment on this matter and any claim of error is waived in the absence of plain error. R.C.M. 1106(f)(6); *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000). Additionally, the appellant must make a colorable showing that the error materially prejudiced his substantial rights. Article 59(a), UCMJ, 10 U.S.C. § 859(a); *United States v. Lee*, 52 M.J. 51, 53 (C.A.A.F. 1999); *United States v. Powell*, 49 M.J. 460, 465 (C.A.A.F. 1998). We conclude there was error in the SJAR because it incorrectly stated the maximum punishment based on the forum; however, we do not find a colorable showing of prejudice. Although the appellant contends that the SJAR gave the convening authority an improper frame of reference, we do not agree that he was misled. The convening authority was the special court-martial convening authority, not the general court-martial convening authority[3] and was undoubtedly familiar with the limits of his authority. The SJAR also correctly reminded the convening authority that the pretrial agreement, which the convening authority entered into with the appellant, limited the forum to a special court-martial. While 20 months would have been the maximum imposable term of confinement in a general court-martial, the convening authority was sufficiently on notice of the limitations in this special court-martial.

[1] This amount, effective December 2005, reflects 2/3 of the basic pay of an airman in the grade of E-1 having at least four months time in service.

[2] The actual language in the SJAR is: "The maximum imposable sentence for the offense for which the accused was convicted is a Bad Conduct Discharge, confinement for 20 months, reduction to the grade of E-1, forfeiture of 2/3 pay for one year and a fine. The accused's pretrial agreement limited the forum for his trial to a special court-martial. The pretrial agreement does not, therefore, limit your authority to approve the sentence as adjudged."

[3] Special Order G05-002, Department of the Air Force, Washington, D.C., 20 June 2005.

Reassessing the sentence based on the error noted, the entire record, and the principles set forth in *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986), we affirm only so much of the sentence as provides for a bad-conduct discharge, confinement for 9 months, forfeiture of $823.00 pay for 1 month, and reduction to E-1.

The findings and the 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; *Reed*, 54 M.J. at 41. Accordingly, the findings and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner