

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

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**UNITED STATES**

**v.**

**Technical Sergeant MACARIO B. ROMBAOA  
United States Air Force**

**ACM S30447**

**29 September 2005**

Sentence adjudged 22 July 2003 by SPCM convened at Hickam Air Force Base, Hawaii. Military Judge: David F. Brash (sitting alone).

Approved sentence: Bad-conduct discharge and reduction to E-4.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, Major Sandra K. Whittington, and Major L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Michelle M. McCluer, and Clayton O'Connor (legal intern).

Before

**BROWN, MOODY, and FINCHER**  
Appellate Military Judges

**PER CURIAM:**

We have examined the record of trial, the assignment of error, and the government's reply. The appellant asks us to dismiss the charges and specifications for lack of jurisdiction because the convening authority improperly selected the court members. The military judge considered this argument at trial and disagreed with the defense position. We also disagree and affirm the findings and sentence.

The facts of this case are not in dispute. The convening authority personally selected the court members. Although the staff judge advocate (SJA) provided him with personal data sheets of suggested available officers, the convening authority decided not to use them. Instead, he selected the members from information listed in the base officer alpha roster. This roster reflects name, rank, date of rank, total time on active duty, date

of birth, date assigned to station, duty title, unit, date of return from overseas, and educational degree level.

The convening authority testified at trial and explained his rationale for using the alpha roster rather than the personal data sheets provided by the SJA. He said he did not like the idea of any sort of “pre-selection process” that could limit his ability to choose members from a wider pool. For that reason, he preferred to use the alpha roster. In his opinion, it gave him the information he needed to make his selections under the criteria listed in Article 25, UCMJ, 10 U.S.C. § 825. He further explained that because of his position as wing commander, he was well aware of officers who were not qualified to serve.

Most of the cases regarding improper selection of court members deal with the evils of improper screening of members for the convening authority’s consideration. *See, e.g., United States v. Dowty*, 60 M.J. 163 (C.A.A.F. 2004). In the appellant’s case, however, there was no screening process. The convening authority simply took the information in the alpha roster, combined it with his experience as a wing commander and Air Force officer for 22 years, and gleaned the information he needed about age, education, training, experience, length of service, and judicial temperament to make his selection. Not only that, he thoughtfully explained his reasons for using this method. Before denying the defense motion to dismiss, the military judge made extensive findings of fact and conclusions of law. We agree with his findings and conclusions and hold that the convening authority properly considered the criteria listed in Article 25, UCMJ, when he selected the court members in the appellant’s case. *See United States v. McKinney*, \_\_\_ M.J. \_\_\_, ACM 35485 (A.F. Ct. Crim. App. 15 Aug 2005).

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

ANGELA M. BRICE  
Clerk of Court