

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class FRED T. ROOTERS III
United States Air Force

ACM 36149

22 February 2006

Sentence adjudged 23 November 2004 by GCM convened at Sheppard Air Force Base, Texas. Military Judge: James L. Flanary (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 8 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland, Major Andrew S. Williams, and Captain Kimberly A. Quedensley.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Major Michelle M. McCluer, and Major Heather L. Mazzeno.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

The single assigned error is whether the convening authority, in his action, failed to reflect the illegal pretrial punishment credit directed by the military judge, as required by Rule for Courts-Martial (R.C.M.) 1107(f)(4)(F).¹ Appellate government counsel concede error, but ask that we remedy it by ordering a corrected promulgating order,² instead of returning the case for new convening authority action.

We agree the convening authority erred by not directing the three days of Article 13, UCMJ, 10 U.S.C. § 813, credit in his action. Despite appellate government counsel's

¹ Appellate defense counsel characterizes the credit as time ordered for illegal pretrial confinement, but the trial defense counsel contended, and the military judge found, illegal pretrial *punishment*; i.e., credit for a violation of Article 13, UCMJ, 10 U.S.C. § 813.

² See R.C.M. 1114.

assertion, the case must be returned for a new action because the promulgating order memorializes the action. The legal error here is in the convening authority's action itself – it must be reaccomplished before a corrected promulgating order may be issued.

Accordingly, we return the record of trial to The Judge Advocate General for remand to the convening authority to withdraw the erroneous action and substitute a corrected action and promulgating order. Thereafter, Article 66(b), UCMJ, 10 U.S.C. § 866(b), will apply.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator