

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

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**UNITED STATES**

**v.**

**Airman First Class JOSHUA M. SAHD  
United States Air Force**

**ACM 35056 (f rev)**

**31 August 2006**

Sentence adjudged 19 December 2001 by GCM convened at Robins Air Force Base, Georgia. Military Judge: Sharon A. Shaffer (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 3 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Lieutenant Colonel Patricia A. McHugh, Major Terry L. McElyea, Major Sandra K. Whittington, Major James M. Winner, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Gary F. Spencer, Lieutenant Colonel Lance B. Sigmon, Lieutenant Colonel Robert V. Combs, Major John D. Douglas, Major Matthew S. Ward, and Major Kevin P. Stiens.

Before

**BROWN, JACOBSON, and SCHOLZ  
Appellate Military Judges**

PER CURIAM:

This case is before our Court for further review because the original action was set aside. *United States v. Sahd*, ACM 35056 (A.F. Ct. Crim. App. 12 Jan 2005) (unpub. op.). This Court returned the case to The Judge Advocate General for remand to the convening authority for new post trial review and action because the original addendum to staff judge advocate's recommendation (SJAR) contained new matter, but was not served upon the appellant and counsel in accordance with Rule for Court-Martial (R.C.M.) 1106(f)(7). On 22 April 2005, a

new addendum was completed. No new clemency matters were submitted by the appellant or his newly assigned defense counsel, and on 27 May 2005, the convening authority completed a new action that approved the findings and sentence as adjudged.

The case is now before this Court for further review, and appellant asserts a new assignment of error. He asserts that new post-trial processing should be ordered because there is no evidence that the appellant or defense counsel were properly served with post-trial materials, nor is there evidence that the convening authority received the original SJAR and first addendum. We find merit in one aspect of the appellant's assertion of error and again return the record for new post-trial processing.

The question of what information was provided to the convening authority prior to taking action on 27 May 2005, was adequately answered by the affidavit prepared by the staff judge advocate (SJA) and submitted to this Court by the United States. However, the question of whether the appellant and his counsel were properly served and given an opportunity to submit matters in clemency remains unclear. The documents admitted upon motion by the United States are insufficient to show that the appellant was given an opportunity to consult with his new counsel and participate in the clemency process in a meaningful way. In fact, an e-mail submitted by the government includes a request from the appellant's assigned counsel for information on how to contact her client. There is no indication that this information was ever provided, that the defense counsel was able to speak with the appellant, or that the appellant was even located. Instead, the SJA's affidavit simply contains an averment that the "defense did not submit any additional matters to the convening authority during the time for proper submissions, or at any later time."

R.C.M. 1106(f)(1), clearly explains how to serve SJARs and addendums on the accused, including procedures to follow if the accused cannot be served personally. Since even these minimal procedures were not followed in this case, we cannot and will not assume that the appellant was properly served or had a meaningful opportunity to submit clemency matters.

The action of the convening authority is set aside. Accordingly, the record of trial will be returned to The Judge Advocate General for remand to the appropriate convening authority for new post-trial processing consistent with Article 60, UCMJ, 10 U.S.C. §860. Thereafter, Article 66(c), UCMJ, 10 U.S.C. §866(c), shall apply.

Judge SCHOLZ did not participate.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator