

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

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

ACM 35056 (f rev)

30 April 2007

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 Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Lance B. Sigmon, Lieutenant Colonel Robert V. Combs, Major John D. Douglas, Major Matthew S. Ward, Major Kevin P. Stiens, and Captain Jamie L. Mendelson.

Before

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

UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court for the third time because the original action and the second action were set aside. *United States v. Sahd*, ACM 35056 (A.F. Ct. Crim. App. 12 Jan 2005) (unpub. op.); *United States v. Sahd*, ACM 35056 (f rev) (A.F. Ct. Crim. App. 31 Aug 2006) (unpub. op.). This Court first 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 the staff judge advocate's recommendation (SJAR) contained new matter but was not served upon the appellant and counsel in accordance with Rule for Courts-Martial (R.C.M.) 1106(f)(7). Upon further review, after a new addendum was completed and new action taken, we agreed with the appellant that there was no evidence the government substantially complied with R.C.M. 1106(f)(1) prior to new action being taken on the case. We again sent the case back for new post-trial processing. That processing has now been completed, and the appellant's counsel again asserts the government has not complied with R.C.M. 1106(f)(1), in that there is no proof the appellant was served with the new SJAR prior to the new action being taken. We find appellant's assertion of error to be without merit.

On 20 October 2006, a new SJAR was prepared. On 16 November 2006, the appellant's defense counsel submitted a request for clemency on behalf of the appellant. No submission was received from the appellant himself. On 17 November 2006, a new addendum was completed, and on 20 November 2006 the convening authority took action on the case, approving the findings and sentence as adjudged.

The documents attached to the record of trial do not indicate the appellant was properly served with the SJAR and given an opportunity to respond; however, on 5 March 2007, appellate government counsel moved to submit three documents to support their answer to the appellant's assertion of error. The appellant did not object to the motion and we admitted the documents. The first document is a declaration from Master Sergeant (MSgt) S, the noncommissioned officer in charge of the Military Justice section of the convening authority's legal office. MSgt S asserts that she mailed the SJAR to the appellant's last known address via certified mail, and the appellant signed for the delivery on 30 October 2006. The second document is the memorandum sent to the appellant by the legal office, explaining his rights and the procedure necessary to submit clemency matters. The third document is a copy of a United States Postal Service Certified Mail Receipt which appears to have been signed by the appellant on 30 October 2006.

We review records of trial de novo to determine whether post-trial processing was properly completed. *United States v. Chatman*, 46 M.J. 321 (C.A.A.F. 1997). Considering the entire record, we find the government has substantially complied with R.C.M. 1106 (f)(1) in that the appellant was properly served with the new SJAR and given an opportunity to respond.*

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

* We suggest that in future cases involving situations where the receipt of post-trial documents may be a potential issue, local legal offices take the proactive step of including declarations, certified mail receipts, and related documents in the post-trial packaging.

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

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator