

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JOSHUA R. SCARBOROUGH
United States Air Force**

ACM 35454

10 September 2004

Sentence adjudged 12 December 2002 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Ann D. Shane.

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Antony B. Kolenc.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Michelle M. Lindo.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. We conclude that the Secretary of the Air Force did not divest the Commander of the 9th Air Force Provisional of authority to convene general courts-martial. *See United States v. Hardy*, ACM 35371 (A.F. Ct. Crim. App. 27 Jul 2004).

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court