

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman BENJAMIN D. SMITH
United States Air Force**

ACM 34857

11 February 2002

Sentence adjudged 18 September 2001 by GCM convened at Hill Air Force Base, Utah. Military Judge: Robert G. Gibson Jr. (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Beverly B. Knott, Lieutenant Colonel Timothy W. Murphy, and Major Jeffrey A. Vires.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo.

Before

**BURD, BRESLIN, and HEAD
Appellate Military Judges**

PER CURIAM:

In our review of this case, which was submitted to us on its merits, the appellant has indicated, in a footnote in his assignment of errors, that it is unclear whether the trial defense counsel was permitted to examine the record of trial before authentication in accordance with Rule for Courts-Martial (R.C.M.) 1103(i)(1)(B). However, the addendum to the staff judge advocate's recommendation (SJAR) states that the trial defense counsel was given the record of trial and the SJAR on 28 September 2001, seven days after authentication by the military judge. Additionally, the appellant was served with a copy of the record on 25 September 2001. In his response to the SJAR, the trial defense counsel did not object to the contents of the record of trial. Accordingly, the appellant suffered no prejudice even if his trial defense counsel was not afforded the opportunity to examine the record of trial prior to authentication. *See* Article 38(c), UCMJ, 10 U.S.C. § 838(c); *United States v. Munoz*, 54 M.J. 917 (A.F. Ct. Crim. App. 2001), *pet. denied*, 55 M. J. 371 (2001).

The 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; *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, SSgt, USAF
Chief Court Administrator