

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic HARRY W. SMITH
United States Air Force**

ACM 36808

26 January 2007

Sentence adjudged 20 June 2006 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: Ronald A. Gregory (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 10 months, and forfeiture of all pay and allowances.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland and Captain Timothy M. Cox.

Appellate Counsel for the United States: Colonel Gerald R. Bruce.

Before

BROWN, BECHTOLD, and BRAND
Appellate Military Judges

PER CURIAM:

The appellant was convicted, in accordance with his pleas, of one specification of wrongful use of cocaine, one specification of wrongful use of marijuana, and one specification of wrongful use of oxymorphone, a schedule II controlled substance, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. His approved sentence consists of a bad-conduct discharge, confinement for 10 months, and forfeiture of all pay and allowances.

The appellant does not challenge the findings or sentence of his court-martial and has submitted his case to this Court for review on its merits. We find the findings and sentence correct in both law and fact. *See* Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). However, we find error in the 11 August 2006 Court-Martial Order (CMO). Specifically, the CMO states, with respect to Specification 3 of the Charge, that the appellant pled and was found guilty of wrongfully using oxymorphone between on or about 25 March 2006 and on or about 2 April 2006.

The correct timeframe is between on or about 2 March 2006 and on or about 2 April 2006. Jeopardy has attached for the appellant's wrongful use of oxymorphone for the period of 2 to 25 March 2006 and the CMO should reflect that accordingly. Based on the foregoing, we order the promulgation of a corrected Court-Martial Order.

The findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator