

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman MICHAEL J. SONEGO
United States Air Force**

ACM S30216 (f rev)

29 June 2006

Sentence adjudged 21 August 2002 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Israel B. Wilner (sitting alone) and Barbara G. Brand (*DuBay* hearing).

Approved sentence: Bad-conduct discharge and forfeiture of \$500.00 pay per month for 12 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Major Terry L. McElyea, Major Antony B. Kolenc, Major Sandra K. Whittington, and Major L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Shannon J. Kennedy, and Major Jin-Hwa L. Frazier.

Before

BROWN, MOODY, and JACOBSON
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This is the second time this case has come before our court for review. We previously affirmed the appellant's conviction by a special court-martial for use of 3,4-Methylenedioxymethamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. *See United States v. Sonego*, ACM 30216 (A.F. Ct. Crim. App. 28 Apr 2004) (unpub. op.). Subsequently, the United States Court of Appeals for the Armed Forces (CAAF) set aside our decision and ordered a limited factfinding hearing pursuant to *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967). *See United States v. Sonego*, 61

M.J. 1 (C.A.A.F. 2005). The purpose of this hearing was to “resolve questions of fact and make conclusions of law with respect to whether the *McDonough* test [*McDonough Power Equip. Inc. v. Greenwood* 464 U.S. 548 (1984)] for a new trial due to juror nondisclosure during voir dire has been met.” *Sonego*, 61 M.J. at 4.

On 19 August 2005, a factfinding hearing was held at Lackland Air Force Base, Texas. Based on these proceedings, the convening authority concluded that the *McDonough* test for a new trial due to juror nondisclosure during voir dire had not been met and supplemental convening authority action was not warranted. In accordance with the instructions of CAAF, the convening authority returned the entire record to this court for further review pursuant to Article 66(c), UCMJ, 10 U.S.C. § 866(c). This case came before this Court for further review with no additional assignments of error.

After careful review of the record of the factfinding hearing, we conclude that the lower court’s findings of fact are supported by the record of the factfinding hearing, are not clearly erroneous, and subsequently should not be overturned. *See United States v. Richter*, 51 M.J. 213, 220 (C.A.A.F. 1999). We hold that the appellant is not entitled to a sentence rehearing.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator