

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class SHAWN O. SPENCER
United States Air Force**

ACM S30204

6 April 2004

Sentence adjudged 23 August 2002 by SPCM convened at Moody Air Force Base, Georgia. Military Judge: Thomas G. Crossan (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 months, forfeiture of \$737.00 for 2 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Kyle R. Jacobson.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Lane A. Thurgood.

Before

**PRATT, GRANT, and CONNELLY
Appellate Military Judges**

OPINION OF THE COURT

CONNELLY, Judge:

The appellant pled guilty to wrongful distribution of marijuana, larceny and housebreaking, in violation of Articles 112a, 121 and 130, UCMJ, 10 U.S.C. §§ 912a, 921 and 930. His approved sentence consisted of a bad-conduct discharge, confinement for 2 months, forfeiture of \$737.00 pay per month for 2 months, and reduction to airman basic. On appeal, he alleges the staff judge advocate (SJA) did not properly advise the convening authority of his options concerning clemency.

In his clemency submission, the appellant and his counsel requested the convening authority not approve his bad-conduct discharge or in the alternative to enter him into the

Return-to-Duty Program (RTDP). The SJA in his addendum to the SJA's recommendation (SJAR) advised the convening authority that he was required to consider the defense submission prior to taking action. The SJA did not specifically advise the convening authority that he could approve the bad-conduct discharge – as well as the rest of the sentence – and still enter the appellant into the RTDP.

The contents of the SJAR and any addendum are governed by Rule for Courts-Martial (R.C.M.) 1106. Pursuant to this rule, the SJA was under no additional duty to comment or further explain the defense's clemency request. See *United States v. O'Shields*, 57 M.J. 535 (A.F. Ct. Crim. App. 2002); *United States v. Foy*, 30 M.J. 664 (A.F.C.M.R. 1990). The SJA's advice to the convening authority was correct. No error was committed.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the appellant's substantial rights 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

LAQUITTA J. SMITH
Documents Examiner