

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic JONATHAN M. SPILLER
United States Air Force**

ACM S30520

31 August 2004

Sentence adjudged 14 November 2003 by SPCM convened at Dyess Air Force Base, Texas. Military Judge: Dixie A. Morrow.

Approved sentence: Bad-conduct discharge and confinement for 60 days.

Appellate Counsel for Appellant: Lieutenant Colonel Carlos L. McDade, Major Terry L. McElyea, and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Gary F. Spencer.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

The promulgating order contains an error related to the findings of the court-martial. Pursuant to his pleas, the appellant was convicted of all charges and specifications, including Specification 2 of Charge IV, which alleged that he was drunk and disorderly at or near Dyess Air Force Base, Texas, on or about 18 October 2003, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The staff judge advocate's recommendation (SJAR) included an Air Force Form 1359, Report of Result of Trial, that reflected the appellant's guilty plea to Specification 2 of Charge IV and the guilty finding as to that same specification. The convening authority approved the adjudged sentence without specific reference to the findings. The promulgating order, however, lists only a single, unnumbered specification under Charge IV, for the offense of incapacitation for duty, in violation of Article 134, UCMJ, which, as reflected on the charge sheet, was Specification 1 of Charge IV.

Where, as here, the convening authority expressly approves only the sentence in the action, he implies a decision to approve the findings as they are reported to him in the SJAR. See Rule for Courts-Martial 1107(f)(3), Discussion; *United States v. Diaz*, 40 M.J. 335, 343 (C.M.A. 1994). While the omission of Specification 2 of Charge IV from the promulgating order does not affect the legality of the court-martial findings, it is an administrative error that should be corrected. Accordingly, we order the correction of the promulgating order to reflect the plea and finding as to Specification 2 of Charge IV. The record need not be returned to this Court.

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