

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman MIKEL S. STROUD
United States Air Force

ACM S30613

14 October 2004

Sentence adjudged 19 March 2004 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: Timothy D. Wilson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, forfeiture of \$795.00 pay per month for 9 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Carlos L. McDade, Major Terry L. McElyea, and Captain John N. Page III.

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

Before

MALLOY, JOHNSON, and GRANT
Appellate Military Judges

PER CURIAM:

While we do not find prejudicial error, we note that the language in the convening authority's action, concerning illegal pretrial confinement credit, does not comply with the requirements set forth in Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, ¶ 9.8.3 (26 Nov 2003). Instead of inserting, "The accused will be credited with 58 days administrative credit against the sentence to confinement," the action should have read, "The accused will be credited with 58 days for illegal pretrial confinement." However, we find that the action of the convening authority, although improperly worded, may be reasonably and unambiguously interpreted to refer to the *illegal* pretrial punishment, and therefore, it is not necessary to return the action for correction. *United States v. Otero*, 26 M.J. 546, 549 (A.F.C.M.R. 1988).

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