

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class DEAN E. THOMPSON, JR.
United States Air Force**

ACM 37380 (f rev)

15 April 2013

Sentence adjudged 20 November 2008 by GCM convened at Goodfellow Air Force Base, Texas. Military Judge: W. Thomas Cumbie and Matthew D. Van Dalen (*DuBay** hearing).

Approved sentence: Bad-conduct discharge, confinement for 9 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel James B. Roan; Lieutenant Colonel Gail E. Crawford; Major Shannon A. Bennett; Major Michael A. Burnat; Major Reggie D. Yager; and Major Nathan A. White.

Appellate Counsel for the United States: Colonel Don. M. Christensen; Lieutenant Colonel Christopher T. Smith; Lieutenant Colonel Jeremy S. Weber; Major Naomi Porterfield; Major Tyson D. Kindness; and Gerald R. Bruce, Esquire.

Before

ORR, MARKSTEINER, and HECKER
Appellate Military Judges

UPON FURTHER REVIEW

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of officer members convicted the appellant, contrary to his pleas, of one specification of divers use of ecstasy and one specification of

* *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

divers use of marijuana, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged sentence consisted of a bad-conduct discharge, one year of confinement, forfeiture of all pay and allowances, and reduction to the grade of E-1. After receiving the matters submitted by the appellant and his trial defense counsel requesting clemency, the convening authority reduced the amount of the appellant's adjudged confinement by three months. The approved sentence consisted of a bad-conduct discharge, 9 months of confinement, forfeiture of all pay and allowances, and reduction to the grade of E-1.

This case is before this Court a third time for further review. In a published decision, issued 3 June 2010, this Court affirmed the approved findings and sentence. *United States v. Thompson*, 69 M.J. 516 (A.F. Ct. Crim. App.), *rev'd*, 69 M.J. 456 (C.A.A.F. 2010) (mem.). By a decision issued on 20 December 2010, the Court of Appeals for the Armed Forces (CAAF) found that we failed to apply the "colorable showing of possible prejudice" standard when determining whether the appellant received ineffective assistance of counsel post-trial. *Thompson*, 69 M.J. at 456. As a result, our superior court vacated our decision and remanded the case to this Court for further review. *Id.* Finding no material prejudice to the appellant after applying the proper standard, we again affirmed the findings and the sentence in an unpublished decision. *United States v. Thompson*, ACM 37380 (rem) (A.F. Ct. Crim. App. 27 July 2011) (unpub. op.), *rev'd*, 71 M.J. 93 (C.A.A.F. 2012) (mem.). On 5 January 2012, our superior court granted review and again set aside our decision. *Thompson*, 71 M.J. at 93. The CAAF returned the record of trial to the Judge Advocate General of the Air Force for remand to an appropriate convening authority to order a hearing, pursuant to *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967), to make findings of fact and conclusions of law related to whether the appellant received post-trial ineffective assistance of counsel and whether the appellant has made a colorable showing of possible prejudice. *Thompson*, 71 M.J. at 93. Consistent with the CAAF remand, a *DuBay* hearing was convened on 27 March 2012. On 30 March 2012, the military judge made his findings of fact and conclusions of law. He determined that the appellant received post-trial ineffective assistance of counsel and made a colorable showing of possible prejudice. We agreed and remanded the case for new post-trial processing. *United States v. Thompson*, ACM 37380 (f rev) (A.F. Ct. Crim. App. 22 August 2012) (unpub. op.).

On 12 November 2012, the appellant submitted a request for clemency to the convening authority in response to the new Staff Judge Advocate's Recommendation. He asked the convening authority to either: (a) set aside the adjudged forfeitures and the entire confinement sentence, or (b) set aside the bad-conduct discharge, set aside the adjudged forfeitures, and reduce the confinement sentence to six months. Additionally, he asked the convening authority to waive the automatic forfeitures for the benefit of his spouse. On 15 November 2012, the convening authority approved the findings and so much of the sentence as provided for a bad-conduct discharge, confinement for 9 months, forfeiture of all pay and allowances, and reduction to E-1.

On 29 March 2013, the appellant's counsel notified the Court that the remand issue of whether the appellant received ineffective assistance of counsel was resolved by the convening authority's new action. We agree.

Conclusion

The appellant has submitted the record for further review without asserting any additional errors. The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant remains. 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.



FOR THE COURT

STEVEN LUCAS
Clerk of the Court