

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Chief Master Sergeant SUSAN Y. TILLER
United States Air Force

ACM 36733

24 September 2007

Sentence adjudged 14 February 2006 by GCM convened at Robins Air Force Base, Georgia. Military Judge: Jennifer A. Whittier.

Approved sentence: See opinion.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Kimani R. Eason.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Contrary to her pleas, the appellant was convicted of two specifications of wrongful use of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged sentence consisted of a bad-conduct discharge, total forfeitures of all pay and allowances, and reduction to E-3.

The appellant asserts the approved sentence of forfeitures of two-thirds pay should be limited to only one month since the forfeitures approved by the convening authority were not specific in duration. The appellee concedes the error but requests the case be remanded for clarification by the convening authority.

The staff judge advocate, in his recommendation and his addendum to that recommendation, suggested the convening authority approve the sentence as adjudged. This advice was incorrect in that the maximum forfeitures which can be approved, when an individual is not sentenced to confinement, is limited to two-thirds pay per month (not allowances). See *United States v. Warner*, 25 M.J. 64 (C.M.A. 1987). “Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last.” Rule for Courts-Martial (R.C.M.) 1003(b)(2). “When the action of the convening . . . authority is incomplete, ambiguous, or contains clerical error, the authority who took the incomplete, ambiguous, or erroneous action may be instructed by [a reviewing] authority . . . to withdraw the original action and substitute a corrected action.” Rule for Courts-Martial 1107(g). See also *United States v. Gosser*, 64 M.J. 93, 96 (C.A.A.F. 2006).

In the case sub judice, the action stated, “only so much of the sentence as provides for two-thirds pay and allowances, reduction to airman first class, and a bad conduct discharge is approved and, except for the bad conduct discharge will be executed.” A literal reading of the action would indicate that the convening authority approved paying the appellant two-thirds pay and allowances. It did not specify a whole dollar amount of forfeitures, if any, or the number of months the forfeitures will last. The action does not comply with R.C.M. 1003(b)(2), and is ambiguous.

Conclusion

The findings 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). The action of the Convening Authority is set aside. The record of trial is returned to The Judge Advocate General for remand to the Convening Authority for post-trial processing consistent with this opinion. Thereafter, Article 66(b), UCMJ, 10 U.S.C. § 866(b), will apply.

OFFICIAL



STEVEN LUCAS, GS-11, DAF
Clerk of Court