

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Senior Airman JOSE J. TREVINO  
United States Air Force**

**ACM 36690**

**20 September 2007**

Sentence adjudged 30 January 2006 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: W. Thomas Cumbie (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Captain John S. Fredland, and Captain Griffin S. Dunham.

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 his pleas, the appellant was convicted of one specification of maltreatment, one specification of assault consummated by battery, and one specification of indecent assault, in violation of Articles 93, 128, and 134, UCMJ, 10 U.S.C. §§ 893, 928, 934. The approved sentence consists of a bad-conduct discharge, confinement for 9 months, and reduction to E-1. The convening authority waived mandatory forfeitures, retroactively as of 14 days from the date of adjudged sentence, for six (6) months, release from confinement, or expiration of term of enlistment, whichever is sooner.

The appellant asserts that he is entitled to post-trial relief when the staff judge advocate received the appellant's request for deferment of forfeitures and reduction in grade but waited 56 days, until after the appellant submitted clemency matters, to forward the request to the convening authority.

The day after trial, 31 January 2006, the appellant requested deferral of forfeiture of pay and allowances and reduction in grade, *or in the alternative*, (emphasis added), a waiver of automatic forfeitures. No action was taken on this request until 24 March 2006, when the special court-martial convening authority recommended denial of the request. The staff judge advocate recommendation was served on the appellant on 13 March 2006. The appellant submitted matters, on two occasions, and action was taken 11 April 2006. Further documentation provides that the appellant reenlisted 3 November 2003, for a term of 2 years and 9 months, making his Expiration Term of Service (ETS) date 2 August 2006. The appellant was released from confinement on 26 August 2006.

We review post-trial processing issues de novo. *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006); *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). Before an appellant will be granted relief from a denial of timely review, the appellant must demonstrate "some real harm or legal prejudice flowing from that delay." *United States v. Bell*, 46 M.J. 351, 353 (C.A.A.F. 1997) (citing *United States v. Jenkins*, 38 M.J. 287, 288 (C.M.A. 1993)).

Although the request of the appellant was not brought to the attention of the convening authority in what we consider a timely matter, the appellant received exactly what he requested – deferment or waiver of forfeitures. Further, the appellant has failed to demonstrate any harm or prejudice based upon the 56-day delay. Reviewing the entire record, submissions of counsel, and accompanying documentation, it is apparent there was no prejudice. Mandatory forfeitures were waived for the maximum allowable period, and under the circumstances of this case, for the entire required time.

### *Conclusion*

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 findings and sentence are

AFFIRMED.

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