

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman DEMETRIC R. UPSHAW
United States Air Force**

ACM 36183 (recon)

31 March 2006

Sentence adjudged 3 November 2004 by GCM convened at Hurlburt Field, Florida. Military Judge: Donald A. Plude (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 14 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Major Karen L. Hecker, and Captain Christopher S. Morgan.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Matthew S. Ward.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

UPON RECONSIDERATION

PER CURIAM:

This case is before us on the appellant's motion for reconsideration of our opinion issued on 26 January 2006. *United States v. Upshaw*, ACM 36183 (A.F. Ct. Crim. App. 27 Jan 2006) (unpub. op.). The appellant avers that an administrative oversight led to his case being prematurely submitted to this Court for review on its merits. The appellant contends that, but for this oversight, he would have submitted an assignment of error for this Court's consideration.

The appellant submitted a proposed assignment of error along with his motion for reconsideration. In his assignment of error, the appellant alleges that, under the unique

facts of his case, three of the four conspiracy specifications to which he pled guilty should properly have been charged as a single specification. He asks us to merge the three specifications into one. The government does not oppose the appellant's motion for reconsideration and submitted a reply to the proposed assignment of error concurring with the appellant's legal arguments and conceding that the relief he seeks is appropriate.

We hereby grant the appellant's motion for reconsideration. We accept, on our own motion, both the appellant's proposed assignment of error and the government's reply thereto. Finding merit to the appellant's appeal, we grant relief. *See United States v. Frelix-Vann*, 55 M.J. 329, 332 (C.A.A.F. 2001); *United States v. Pereira*, 53 M.J. 183, 184-85 (C.A.A.F. 2000). Charge I, Specification 1, is hereby amended to read:

In that SENIOR AIRMAN DEMETRIC R. UPSHAW, 16th Security Forces Squadron, Hurlburt Field, Florida, United States Air Force, did, at or near Fort Walton Beach, Florida, on or about 18 January 2004, conspire with Airman First Class Victoria N. Griffin to commit an offense under the Uniform Code of Military Justice, to wit: forgery, and in order to effect the object of the conspiracy the said Airman First Class Victoria N. Griffin did, with intent to defraud, falsely make the signature of Tanganyika Upshaw to certain documents, to wit: an IRS Form 8879, an Imperial Capital Bank Loan Agreement and Disclosure Statement, and a Refund Anticipation Loan Application, each in the following words and figures, to wit: "Tanganyika Upshaw," which said signatures would, if genuine, apparently operate to the legal harm of another and which were used to the legal harm of another in that the false signatures were used to obtain a tax refund check in which the said Tanganyika Upshaw had a financial interest, and to establish a debt for which the said Tanganyika Upshaw was liable, without her knowledge and consent.

Specifications 2 and 3 of Charge I are set aside and dismissed.

Reassessing the sentence, we conclude that our modification of the findings does not affect the facts before the appellant's court-martial. Because the military judge treated the three specifications as one during sentencing, the modification also has no impact on the maximum punishment. We are confident the appellant would have received the same sentence regardless of the change. *See United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002) (citing *United States v. Sales*, 22 M.J. 305, 307 (C.M.A. 1986)); *United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990). Moreover, we find the sentence to be appropriate for this offender and his crimes. *See United States v.*

Healy, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The findings, as modified, and the sentence, as reassessed, are correct in law and fact, and no other 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, as modified and sentence, as reassessed, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court