

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant MICHAEL A. VAN BIBBER
United States Air Force

ACM S30119 (f rev)

27 June 2005

Sentence adjudged 28 February 2002 by SPCM convened at Patrick Air Force Base, Florida. Military Judge: Thomas G. Crossan, Jr. (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Major Terry L. McElyea, Major Maria A. Fried, Major Andrews S. Williams, Major Sandra K. Whittington, Major Andrea M. Gormel, and Captain David P. Bennett.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Lieutenant Colonel William B. Smith, and Major John D. Douglas.

Before

MOODY, SMITH, and PETROW
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court for further review because the original action was set aside. *United States v. Van Bibber*, No. 04-0310/AF (21 Jul 2004) (mem.). Our superior court returned the case to The Judge Advocate General for remand to the convening authority for a new action in light of its decision in *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). On 23 September 2004, the convening authority completed a new action to comply with *Emminizer*, waiving the automatic and required forfeitures for six

months for the benefit of the appellant's wife and deferring the adjudged forfeitures from 14 March 2002 through 29 April 2002.

The appellant submitted the record and new action for further review on its merits. Our review discloses no substantive error.¹ 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

¹ The convening authority incorrectly stated the amount of waived forfeitures as \$767.00, when the waived forfeitures at the time of the original action were \$737.00. The appellant asserts no prejudice, and we do not find prejudice.