

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DANIEL J. VELA II
United States Air Force

ACM S31288

14 August 2008

Sentence adjudged 08 March 2007 by SPCM convened at Luke Air Force Base, Arizona. Military Judge: Joseph S. Kiefer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, forfeiture of \$600.00 pay per month for 5 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Donna S. Rueppell, Captain Ryan N. Hoback, and Captain Megan E. Middleton.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Consistent with the appellant's pleas, a military judge sitting as a special court-martial convicted him of one charge and specification of wrongful use of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a, and one charge and specification of incapacitation for the proper performance of duties as a result of wrongful previous overindulgence in methamphetamine, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge sentenced the appellant to a bad-conduct discharge, confinement for 5 months, reduction to E-1 and forfeiture of \$600.00 of pay for 5 months. The convening authority approved a sentence of a bad-conduct discharge,

confinement for 4 months, reduction to E-1 and forfeiture of \$600 pay per month for 5 months.

The appellant asserts one error. The appellant correctly points out that the convening authority erred by approving a forfeiture of \$600 pay per month for 5 months when the military judge only adjudged a forfeiture of \$600 pay for 5 months.

A sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeiture will last. Rule for Courts-Martial (R.C.M.) 1003(b)(2); *see also United States v. Gaston*, 62 M.J. 404, 408 (C.A.A.F. 2006); *United States v. Johnson*, 32 C.M.R. 127, 128 (C.M.A. 1962). Because the announced sentence did not include the words “per month,” we find that the amount announced shall be the total amount to be forfeited. *See United States v. Jones*, 60 M.J. 964, 972 (A.F. Ct. Crim. App. 2005); *United States v. Burkett*, 57 M.J. 618, 620 (C.G. Ct. Crim. App. 2002).

Conclusion

We affirm only so much of the sentence as provides for a bad-conduct discharge, confinement for 4 months, reduction to E-1 and forfeiture of \$600 pay for one month. All rights, privileges, and property of which the appellant has been deprived by virtue of the execution of forfeitures approved by the convening authority which have not been affirmed will be restored. The findings and sentence, as modified, 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, as modified, are

AFFIRMED.

Senior Judge HEIMANN did not participate.

OFFICIAL



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Deputy, Clerk of the Court