

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman RICKY L. WALTERS II
United States Air Force

ACM 36316

27 April 2006

Sentence adjudged 15 April 2005 by GCM convened at Tinker Air Force Base, Oklahoma. Military Judge: Mary M. Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Kimberly A. Quedensley.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Nurit Anderson.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

The sole assigned error is that the convening authority failed to adhere to the terms of the pretrial agreement (PTA) in her action. In the PTA, the convening authority agreed not to approve confinement in excess of 3 months. The adjudged sentence consisted of a bad-conduct discharge, confinement for 4 months, and reduction to the grade of E-1.

In his post-trial recommendation,¹ the staff judge advocate reminded the convening authority of the PTA confinement limitation and recommended she approve only so much of the sentence as provided for a bad-conduct discharge, confinement for

¹ In accordance with Rule for Courts-Martial 1106.

three months, and reduction to the grade of E-1. Nevertheless, the convening authority's action approved the sentence as adjudged.

A PTA "will be enforced based upon the wording of the agreement, and where the intention of both parties at the time of the agreement is clear, the agreement will be upheld." *United States v. Cox*, 46 C.M.R. 69, 71 (C.M.A. 1972) (citing *United States v. Veteto*, 39 C.M.R. 64 (C.M.A. 1968)). Appellate government counsel concede the error. The action must be reaccomplished.

The record of trial is returned to The Judge Advocate General for submission to the convening authority for a new action that conforms to the terms of the PTA. Thereafter, the record will be returned to this Court for further review under Article 66, UCMJ, 10 U.S.C. § 866.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator