

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

---

---

**UNITED STATES**

**v.**

**Airman First Class RICARDO R. WELLS  
United States Air Force**

**ACM S31079**

**27 November 2006**

Sentence adjudged 9 February 2006 by SPCM convened at Robins Air Force Base, Georgia. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, a fine of \$100.00, forfeiture of pay and allowances of \$785.00 for 2 months, a reprimand, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Mark R. Strickland, Major Anniece Barber, and Captain Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce.

Before

ORR, FRANCIS, and SOYBEL  
Appellate Military Judges

PER CURIAM:

This case was submitted on its merits. Upon reviewing the case, this Court discovered an inconsistency between the sentence as announced by the military judge and the sentence as approved by the convening authority.

The sentence announced by the military judge included “forfeitures of \$785.00 pay *per month* for 2 months.” (Emphasis added). However, in his action, the convening authority approved, in part, “forfeitures of pay and allowances of \$785.00 for 2 months.” The convening authority cannot approve forfeitures of allowances unless the sentence includes forfeitures of all pay and allowances. This one did not. The convening authority also left out the words, “per month.” This court is powerless to insert those words into the action even if we thought

that is what the convening authority intended. *See United States v. Burkett*, 57 M.J. 618, 621. (C.G. Ct. Crim. App. 2002). Ambiguous actions may be returned to the convening authority to eliminate the ambiguity. *United States v. Foster*, 39 M.J. 846, 848 (A.C.M.R. 1994).

In the alternative, in the absence of language indicating forfeitures of a certain amount *per month*, this Court can order that the total amount forfeited by appellant amounts to \$785.00. *Burkett*, 57 M.J. at 621. In the interests of efficient administration of justice, we pick the second option and order that the total amount of pay to be forfeited over two months is \$785.00. When rounded down to the nearest whole dollar, that amount is \$392.00 pay per month for two months.

The approved findings and the 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 modified sentence are

AFFIRMED.

Senior Judge ORR participated prior to his reassignment.

OFFICIAL

JEFFREY L. NESTER  
Clerk of Court