

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

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**UNITED STATES**

**v.**

**Airman First Class JAMES W. WEST  
United States Air Force**

**ACM S30699**

**23 January 2006**

Sentence adjudged 26 July 2004 by SPCM convened at Langley Air Force Base, Virginia. Military Judge: Lance B. Sigmon (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 30 days, 45 days hard labor without confinement, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Sandra K. Whittington, and Major John N. Page III.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Carrie E. Wolf, and Captain Kimani R. Eason.

Before

STONE, SMITH, and MATHEWS  
Appellate Military Judges

PER CURIAM:

In his action, the convening authority approved the sentence adjudged and ordered all but the hard labor without confinement executed. That action must be reaccomplished because the convening authority did not have the authority to order the adjudged bad-conduct discharge executed. Article 71(c)(1), UCMJ, 10 U.S.C. § 871(c)(1).

We also find the convening authority's action to be ambiguous with respect to the adjudged hard labor without confinement. In his addendum to the staff judge advocate's recommendation, the staff judge advocate (SJA) recommended "the adjudged findings and sentence be approved *except* for the imposition of hard labor without confinement." The convening authority approved the entire adjudged sentence (including the hard labor without confinement) using the proposed action document submitted to him by the SJA, and then ordered the entire adjudged sentence executed – except for the hard labor

without confinement. The convening authority did not suspend that portion of the sentence under Rule for Courts-Martial (R.C.M.) 1108. *See also* R.C.M. 1107(f)(4)(B).

In light of the recommendation by the convening authority's SJA and the apparent drafting errors by his legal staff, it is likely the convening authority intended to disapprove the adjudged hard labor without confinement, approve the remaining portions of the adjudged sentence, and, except for the bad-conduct discharge, order the approved sentence executed. But given the ambiguity, we must return the case to the convening authority to disapprove the adjudged hard labor without confinement, if that was his intent. *See* R.C.M. 1107(g).

Accordingly, we return the record of trial to The Judge Advocate General for remand to the convening authority to clarify the ambiguity, withdraw the erroneous action, and substitute a corrected action and promulgating order. Thereafter, Article 66(b), UCMJ, 10 U.S.C. § 866(b), will apply.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court