

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic JONATHON D. WHITE
United States Air Force

ACM S30513

27 October 2005

Sentence adjudged 20 November 2003 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: James L. Flanary (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 10 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Steven R. Kaufman.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's answer. The military judge awarded the appellant 65 days of credit for illegal pretrial confinement under Rule for Courts-Martial 305(k). Although the confinement facility gave the appellant credit for the illegal pretrial confinement, the convening authority did not include it in his action. The appellant asks for a new convening authority action and the government agrees. We also agree.

In this case, the appellant actually received the credit towards his confinement, so there was no prejudice. However, the convening authority's action still needs to reflect the amount of credit for illegal pretrial confinement. *See United States v. Stanford*, 37 M.J. 388, 389 (C.M.A. 1993); Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 9.8.3 (18 Apr 2002). Accordingly, we return the record of trial to The Judge

Advocate General for remand to the convening authority for a new action and promulgating order consistent with this opinion. Thereafter, Article 66, UCMJ, 10 U.S.C. § 866, shall apply.

OFFICIAL

ANGELA M. BRICE
Clerk of Court