

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman JAMES E. BURKE III
United States Air Force**

ACM S32137

23 March 2015

Sentence adjudged 16 March 2013 by SPCM convened at Moody Air Force Base, Georgia. Military Judge: Grant L. Kratz and Michael J. Coco.

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

Appellate Counsel for the Appellant: Lieutenant Colonel Jane E. Boomer; Major Anthony D. Ortiz; Major Isaac C. Kennen; and Captain Lauren L. Shure.

Appellate Counsel for the United States: Lieutenant Colonel C. Taylor Smith; Major Roberto Ramírez; and Gerald R. Bruce, Esquire.

Before

**MITCHELL, WEBER, and CONTOVEROS
Appellate Military Judges**

OPINION OF THE COURT

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 18.4.

MITCHELL, Senior Judge:

At a special court-martial, a military judge convicted the appellant, pursuant to his pleas, of two specifications of assault consummated by a battery against his spouse and one specification of disorderly conduct, in violation of Articles 128 and 134, UCMJ, 10 U.S.C. §§ 928, 934. The panel, composed of military officers, convicted the appellant, contrary to his pleas, of two specifications of communicating a threat, in

violation of Article 134, UCMJ. The adjudged and approved sentence was a bad-conduct discharge, confinement for 4 months, reduction to E-1, and a reprimand.

In an earlier opinion, *United States v. Burke*, ACM S32137 (A.F. Ct. Crim. App. 3 November 2014) (unpub. op.), we affirmed the findings in the appellant's case. However, due to errors in the post-trial processing, we ordered the withdrawal and correction of the action. We remanded the case for a corrected action.

On 20 November 2014, the convening authority completed a new action, and subsequently a new court-martial order was issued. The record is now clear that the convening authority decided to waive the automatic forfeitures for four months (or release from confinement if sooner), and the waiver began on 30 March 2013.

Conclusion

We reaffirm our previous decision and find the approved findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the approved findings and sentence are **AFFIRMED**.



FOR THE COURT

STEVEN LUCAS
Clerk of the Court