

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	ACM 38205
Appellee)	
)	
v.)	
)	ORDER
Airman First Class (E-3))	
JEROME C. POWERS,)	
USAF,)	
Appellant)	Special Panel

Consistent with his pleas, a military judge sitting at a general court-martial found the appellant guilty of wrongfully using, distributing and introducing oxymorphone onto a military base on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged sentence was a bad-conduct discharge, confinement for 12 months, reduction to E-1 and forfeiture of all pay and allowances. A pretrial agreement authorized a maximum of ten months of confinement.

In the Staff Judge Advocate Recommendation, the convening authority was correctly informed about the adjudged sentence to 12 months of confinement and the pretrial agreement’s requirement that the confinement be reduced to ten months. There, the staff judge advocate recommended the convening authority approve a sentence in accordance with the pretrial agreement. The appellant’s clemency submission also referenced the convening authority’s obligation to reduce the sentence to ten months based on the pretrial agreement.

This Court is not aware of any breach of the pretrial agreement by the appellant. However, in the Addendum to the Staff Judge Advocate’s Recommendation, the staff judge advocate recommended the convening authority approve the sentence “as adjudged” (without referencing a specific number of months) instead of mentioning the pretrial agreement’s limitation. The convening authority subsequently signed an action stating simply “the sentence is approved.” The General Court-Martial Order (GCMO) also incorrectly stated that the adjudged sentence included confinement for ten months, and then reflects the convening authority’s “approval” of that sentence.

The appellant has suffered no prejudice from this error because the convening authority’s Action, when coupled with the GCMO, correctly reflects that the appellant is to serve only ten months of confinement. The AF Form 1359, *Report of Result of Trial* (1 November 2000), also correctly reflects that his confinement period is limited to ten months.

However, these errors in the GCMO and Action need to be corrected. R.C.M. 1107(g) permits us to instruct a convening authority to withdraw an original Action and substitute a corrected Action where the original Action “is incomplete, ambiguous, or contains clerical error.”

Accordingly, it is by the Court on this 8th day of May, 2013;

ORDERED:

That, because the convening authority’s Action is ambiguous, the Action is set aside and the record of trial is returned to the Judge Advocate General of the Air Force for remand to the convening authority with direction to withdraw the original Action and substitute a corrected Action, followed by the promulgation of a corrected GCMO.

Thereafter, Article 66, UCMJ, 10 U.S.C. § 866, will apply. Upon completion of the corrected Action, the record of trial shall be returned to this Court for further appellate review within 30 days from the date of this order.



FOR THE COURT

A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a faint, light blue circular stamp or watermark.

STEVEN LUCAS
Clerk of the Court