

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee

**BRIEF ON BEHALF OF
APPELLEE**

v.

Docket No. ARMY 20220635

Staff Sergeant (E-6)
RYAN R. ROBEY,
United States Army,

Appellant

Tried at Fort Carson Colorado, on 16
September and 6 December 2022,
before a general court martial
convened by the Commander,
Headquarters, Fort Carson, Colonel
Jacqueline L. Emanuel, Military
Judge, presiding.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Assignment of Error

**WHETHER THE CASE SHOULD BE RETURNED
TO THE CONVENING AUTHORITY TO ENFORCE
THE PROVISION OF A PLEA AGREEMENT TO
WAIVE AUTOMATIC FORFEITURES OF PAY AND
ALLOWANCES.**

Statement of the Case

On 6 December 2022, a military judge sitting as a general-court martial convicted appellant, in accordance with his pleas, of one specification of absence without leave and one specification of wrongful sale of military property in violation of Articles 86 and 108, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 908. (R. at 68). On 6 December 2022, the military judge sentenced appellant to 150 days of confinement and bad conduct discharge. (R. at 82). On 2

February 2023, the convening authority approved the findings and the adjudged sentence, and on 14 February 2023, the military judge entered judgment. (Action; Judgment).

Statement of Facts

Pursuant to appellant's plea agreement, the convening authority agreed "to defer automatic reduction in rank and defer then waive automatic forfeitures and allowances to the extent allowable by regulation and law." (App. Ex. II). The Staff Judge Advocate (SJA) Advice to the convening authority, signed on 2 February 2023, indicates no request by appellant for deferment or waiver of automatic forfeitures. (SJA Clemency Advice). On the same date, the convening authority took no additional action on the findings or sentence, to include deferral of reduction in rank, deferral of automatic forfeitures, or waiver of forfeitures. (Action). The 14 February 2023 Judgment of the Court, incorporating the convening authority's action, noted no additional post-trial action taken. (Judgment).

Assignment of Error

WHETHER THE CASE SHOULD BE RETURNED TO THE CONVENING AUTHORITY TO ENFORCE THE PROVISION OF A PLEA AGREEMENT TO WAIVE AUTOMATIC FORFEITURES OF PAY AND ALLOWANCES.

Standard of Review

Whether the convening authority complied with the provisions of a plea agreement is a mixed question of law and fact. Questions of law are reviewed de novo and questions of fact are reviewed for an abuse of discretion. *United States v. Lundy* 63 M.J. 299, 301 (C.A.A.F 2006).

Law and Argument

Rule for Courts-Martial (R.C.M.) 810(f)(1) provides that:

A Court of Criminal Appeals may order remand for additional fact finding, or for other reasons, in order to address a substantial issue on appeal. . . . Such order shall be directed to the Chief Trial Judge. The Judge Advocate General, or his or her delegate, shall designate a general court-martial convening authority who shall provide support for the hearing.

Appellant asks that this court return the case to the convening authority for specific performance of the provision to waive automatic forfeitures of pay and allowances. The post-trial processing as outlined above appears to have inadvertently denied appellant the deferral and waiver benefits as agreed upon in the plea agreement. Accordingly, the government concurs that the case should be remanded for this purpose in accordance with R.C.M. 810(f)(1). *See generally United States v. Kibler*, No. ARMY 20220245, 2023 CCA LEXIS 468, at *10 (Army Ct. Crim. App. 31 Oct. 2023) (mem. op. and order) (remanding the case to the Chief Trial Judge, pursuant to R.C.M. 810(f)(1) and UCMJ Article 66(f)(3), to

determine whether the convening authority intended to withdraw from the plea agreement after the court set aside and dismissed a specification).

Conclusion

WHEREFORE, the government respectfully requests this honorable court remands this case to the Chief Trial Judge for further remand to comply with the terms of the plea agreement as allowable by law.



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CERTIFICATE OF SERVICE, U.S. v. ROBEY (20220635)

I certify that a copy of the foregoing was sent via electronic submission to the
Defense Appellate Division at [REDACTED]
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