

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
WALKER, POND, and PARKER
Appellate Military Judges

UNITED STATES, Appellee
v.
Staff Sergeant RYAN R. ROBEY
United States Army, Appellant

ARMY 20220635

ORDER

WHEREAS:

On 6 December 2022, a military judge convicted appellant, consistent with his pleas, of one specification of absence without leave and one specification of selling military property without proper authority, in violation of Articles 86 and 108, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 908 [UCMJ]. The military judge sentenced appellant to a bad-conduct discharge and confinement for a total of 150 days.

Appellant pleaded guilty pursuant to a plea agreement he entered with the convening authority (CA) prior to trial. As part of the exchange for appellant's plea of guilty, the CA agreed to "defer then waive automatic forfeitures and allowances to the extent allowable by regulation and law." During the plea inquiry at trial, the military judge discussed the terms of the plea agreement, noting "the convening authority will take action to make sure that you don't get reduced to E-1 and that you don't forfeit all pay and allowances while you're serving confinement."

Despite the existence of the plea agreement, the Staff Judge Advocate's (SJA) clemency advice did not advise the convening authority to take action to defer and waive the automatic forfeitures and allowances. On 2 February 2023, the CA opted to take "[n]o additional action" on the findings or sentence. This was error, as the CA was required by the pretrial agreement to defer and waive automatic forfeitures and allowances, and the CA failed to take any action on the sentence.

NOW THEREFORE, IT IS ORDERED:

1. Pursuant to Rule for Courts-Martial [R.C.M.] 1111(c)(3), we remand this case to the military judge for a modification of the entry of judgment (EOJ) to reflect the convening authority took appropriate action in accordance with the plea

ROBEY —ARMY 20220635

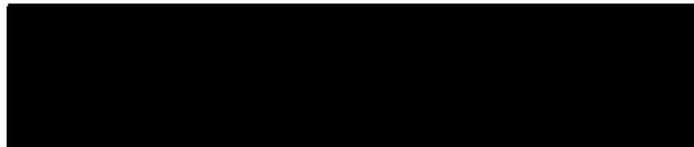
agreement. The first page of the modified EOJ shall reflect the words “MODIFIED EOJ” at the top of the first page.

2. Prior to modification of the EOJ, the military judge shall ensure the SJA completes a corrected clemency advice and the convening authority enters a corrected action that comports with the terms of the plea agreement. Both documents shall reflect the words “CORRECTED COPY” at the top of the first page.

3. The original EOJ, SJA clemency advice, and convening authority action, shall be appended to the record separately.

DATE: 18 January 2024

FOR THE COURT



JAMES W. HERRING, JR.
Clerk of Court

CF: JALS-TJ SJA
 JALS-DA JALS-GA
 JALS-CCR JALS-CR4