

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
TOZZI, CELTNICKS and BURTON
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant MARCUS C. DANIELS
United States Army, Appellant

ARMY 20140538

Headquarters, U.S. Army Alaska
David L. Conn, Military Judge
Colonel Tyler J. Harder, Staff Judge Advocate (pretrial)
Colonel Erik L. Christiansen, Staff Judge Advocate (post-trial)

For Appellant: Lieutenant Colonel Charles Lozano, JA; Major Andres Vazquez, Jr., JA (on brief).

For Appellee: Colonel Mark H. Sydenham, JA; Lieutenant Colonel A.G. Courie III, JA; Major Cormac M. Smith, JA; Captain Linda Chavez, JA (on brief).

8 December 2016

SUMMARY DISPOSITION

Per Curiam:

A military judge sitting as a special court-martial convicted appellant, pursuant to his pleas, of one specification of drunken operation of a vehicle and three specifications of service discrediting conduct when he misrepresented his rank on a credit union's employment verification form in violation of Articles 111 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 911 and 934 (2006 Supp. V. 2012; 2012) [hereinafter UCMJ]. The military judge convicted appellant, contrary to his pleas, of six specifications of violating a general order in violation of Article 92, UCMJ. The military judge sentenced appellant to a bad-conduct discharge, confinement for 180 days, and to be reduced to the grade of E-1. The convening authority approved the adjudged sentence.

This case is before us for review pursuant to Article 66, UCMJ. Appellate defense counsel assigns two errors to this court: appellant alleges his defense

counsel was ineffective regarding submission of Rule for Courts-Martial 1105 matters and excessive post-trial delay. We will defer ruling on these issues as well as matters appellant has raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

After appellant was convicted, his defense counsel was transitioning out of the Army. Appellant released his assigned counsel and was assigned new defense counsel for post-trial matters. The newly assigned defense counsel submitted post-trial matters and clemency matters on behalf of appellant, which consisted of a memorandum with two enclosures: Memorandum for Record (MFR), dated 25 June 2015, and a DCAP Form 6 (Detail and Release of Military Defense Counsel).

Appellant claims he suffered prejudicial error because of the contents of the MFR. “Effective assistance of counsel is especially important during the post-trial phase because it is the accused’s best hope for post-trial relief.” *United States v. Howard*, 47 M.J. 104, 106 (C.A.A.F. 1997) (citations omitted). To ensure appellant receives his “best hope for post-trial relief,” we set aside the action and return the record of trial for a new staff judge advocate recommendation and action by a different convening authority. Additionally, the MFR dated 25 June 2015 will not be presented to this new convening authority unless appellant consents to its use.

CONCLUSION

The action of the convening authority dated 17 July 2015, is set aside. The record of trial is returned to The Judge Advocate General for a new staff judge advocate recommendation and action by a different convening authority in accordance with Article 60(c)-(e). The new convening authority will not consider the MFR dated 25 June 2015 without appellant’s consent.



FOR THE COURT:

A handwritten signature in black ink, appearing to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.
Clerk of Court