

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
SIMS, COOK, and GALLAGHER
Appellate Military Judges

UNITED STATES, Appellee
v.
Private E1 KEVIN M. PEARCE
United States Army, Appellant

ARMY 20110107

Headquarters, United States Army Accessions Command and Fort Knox
Timothy Grammel, Military Judge
Colonel Robert J. Cotell, Staff Judge Advocate

For Appellant: Lieutenant Colonel Imogene M. Jamison, JA; Major Richard E. Gorini, JA; Captain Meghan M. Poirier, JA (on brief).

For Appellee: Lieutenant Colonel Amber J. Roach, JA; Major LaJohnne A. White, JA; Captain Daniel H. Karna, JA (on brief).

16 May 2012

SUMMARY DISPOSITON

Per Curiam:

A military judge sitting as a special court-martial convicted appellant, pursuant to his pleas, of three specifications of absence without leave, in violation of Article 86 of the Uniform Code of Military Justice, 10 U.S.C. § 886 (2008) [hereinafter UCMJ]. Appellant was sentenced to a bad-conduct discharge, confinement for eleven months, and forfeiture of \$978.00 pay per month for eleven months. The convening authority (CA) approved eight months of confinement, sixty-two days of confinement credit, and the remainder of the adjudged sentence.* This case is before us court for review pursuant to Article 66, UCMJ.

* We note that the CA inexplicably waived “automatic forfeiture of two-thirds pay and allowances” for the benefit of appellant’s spouse, yet approved the adjudged forfeiture of \$978.00 pay per month for 11 months, thereby preventing any funds

(continued . . .)

Appellant alleges, and the government concedes, that there is no evidence that a letter from appellant's previous company commander, enclosure 8 to appellant's Rule for Courts-Martial [hereinafter R.C.M.] 1105 matters, was submitted to the CA prior to his taking initial action in appellant's case as is required by R.C.M. 1107(b)(3)(A)(iii) and *United States v. Wheelus*, 49 M.J. 283, 287 (C.A.A.F. 1998). We agree, and will return this case for a new recommendation and action.

CONCLUSION

The convening authority's action, dated 16 June 2011, is set aside. The record of trial is returned to The Judge Advocate General for a new staff judge advocate recommendation and initial action by the same or a different convening authority in accordance with Article 60(c)-(e), UCMJ.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.".

MALCOLM H. SQUIRES, JR.
Clerk of Court

(. . . continued)

from being paid to appellant's spouse. In light of our disposition of this case, however, we need not address this ambiguity.