

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
SQUIRES, MERCK, and CASIDA  
Appellate Military Judges

UNITED STATES, Appellee  
v.  
Staff Sergeant CLAUDE E. PRUITT  
United States Army, Appellant

ARMY 9800284

Fort Stewart  
K. D. Pangburn, Military Judge

For Appellant: Colonel John T. Phelps II, JA; Colonel Adele H. Odegard, JA; Major Leslie A. Nepper, JA; Captain David S. Hurt, JA (on brief).

For Appellee: Colonel Russell S. Estey, JA; Lieutenant Colonel Eugene R. Milhizer, JA; Captain Joseph A. Pixley, JA (on brief).

29 September 1999

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MEMORANDUM OPINION  
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CASIDA, Judge:

In accordance with his pleas, appellant was found guilty by a general court-martial held on 25 February 1998 of one specification of committing indecent acts with a child on divers occasions and one specification of taking indecent liberties with the same child, both in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934 [hereinafter UCMJ]. The military judge sentenced appellant to a dishonorable discharge, confinement for three years, forfeiture of all pay and allowances and reduction to the rank of Private E1. The military judge then recommended that the convening authority "approve a discretionary allotment to [appellant's spouse] in the amount of \$500.00 per month, or such other amount deemed appropriate for her support, for the maximum period authorized by law". On 28 April 1998, in compliance with a pretrial agreement, the convening authority reduced the sentence to confinement to eighteen months and approved the other adjudged punishments.

Appellate defense counsel allege two errors in the court-martial proceedings. Appellant has also submitted matters pursuant to *United States v. Grostefon*, 12 M.J.

431 (C.M.A. 1982). We find no error, nor do the matters submitted personally by appellant warrant relief.

Appellant first alleges that the court-martial was without jurisdiction to try him because there is no evidence in the record of trial to show that the members of the court-martial were personally selected by the successor convening authority, as required by Article 25(d)(2), UCMJ and Rule for Courts-Martial 504(b)(4) [hereinafter R.C.M.]. The charges against appellant were referred to court-martial by Major General (MG) Riley, Commanding General of Fort Stewart, Georgia. In so doing, he approved his staff judge advocate's advice "that the case be referred to the court-martial panel previously selected on Court-Martial Convening Order Number 2, dated 5 June 1997."<sup>1</sup> While R.C.M. 601(b) allows a convening authority to refer charges to a court-martial convened by a predecessor, appellant cites *United States v. Allgood*, 41 M.J. 492 (1995) and *United States v. Ryan*, 5 M.J. 97 (C.M.A. 1978) for the proposition that the record of trial must reflect explicitly the convening authority's personal selection of the members. We disagree.

In *Allgood*, our superior court held that a successor convening authority may rely upon the procedure authorized by R.C.M. 601(b). The only relevant distinction between *Allgood* and the case sub judice is that the convening authority in *Allgood* executed a post-trial affidavit stating he had "adopted" the panel selections of his predecessor-in-command. As in this case, the *Allgood* court found it instructive that no objection to the selection process was raised by the defense at the time of trial and therefore no record was developed to determine what process the successor convening authority used in selecting the members.

In *United States v. Brewick*, 47 M.J. 730 (N.M.Ct.Crim.App. 1997), our sister court encountered the same issue in a case factually identical to this one. That court held that, in the absence of an objection at trial and evidence which supports a contrary inference, *Allgood* permitted an inference that the convening authority complied with all codal and regulatory requirements in referring charges to a court-martial selected by a predecessor-in-command. We agree and find no error.

Appellant's other allegation of error involves a defense request for deferment of forfeitures. As noted above, the military judge recommended approval of a "discretionary allotment" for the benefit of appellant's spouse. On 2 March 1998, the trial defense counsel apparently asked that the convening authority defer execution of forfeitures of appellant's pay and allowances and reduction in rank

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<sup>1</sup> In fact, that convening order was published "BY COMMAND OF MAJOR GENERAL HENDRIX," MG Riley's predecessor-in-command.

until the date of initial action.<sup>2</sup> Brigadier General Valenzuela denied the request on 6 March 1998.

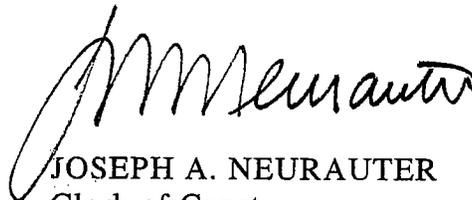
Subsequently, on 28 April 1998, initial action under Article 60, UCMJ, was taken by Colonel (COL) Webster, who was then the general court-martial convening authority. Colonel Webster was explicitly advised of the military judge's recommendation and explicitly declined to follow it. Appellant alleges that COL Webster should have also been informed of the defense counsel's request for deferment, and that nothing in the record of trial demonstrates that he was so informed. The crux of appellant's argument is that a request for deferment of forfeitures and reduction in rank is a request for clemency, and that Article 60 requires that the convening authority receive and consider any requests for clemency directed to the convening authority prior to initial action.

We can decide this issue without resolving appellant's argument concerning the breadth of application of Article 60. First, appellant's representation of the facts overlooks that the trial defense counsel, in his submission to the convening authority under R.C.M. 1105(b), informed COL Webster of the previously denied deferment request. Second, we can conceive of no possible benefit to appellant of informing COL Webster of appellant's deferment request. By law, deferment of the execution of forfeitures and reduction in rank must terminate no later than the date of initial action. *See* UCMJ art. 57(a)(2); R.C.M. 1101(c)(6). Since the convening authority could not then defer forfeitures or reduction in rank, there could be no possible prejudice to the substantial rights of appellant if the convening authority was not informed of the prior request. This allegation of error is without merit.

The findings of guilty and the sentence are affirmed.

Senior Judge SQUIRES and Judge MERCK concur.

FOR THE COURT:

  
JOSEPH A. NEURAUTER  
Clerk of Court

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<sup>2</sup> While the written request is not in the record of trial, the Acting Staff Judge Advocate's recitation of the request and the convening authority's decision are documented.