

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
KERN, YOB, and ALDYKIEWICZ
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant PHILLIP T. SWARTS, JR.
United States Army, Appellant

ARMY 20101008

Headquarters, Fort Drum
Andrew Glass, Military Judge
Lieutenant Colonel Robert L. Manley, III, Staff Judge Advocate

For Appellant: Major Jacob D. Bashore, JA; Captain Barbara A. Snow-Martone, JA.

For Appellee: Pursuant to A.C.C.A Rule 15.2, no response filed.

24 February 2012

SUMMARY DISPOSITION

Per Curiam:

A military judge, sitting as a special court-martial, convicted appellant, pursuant to his plea, of knowingly possessing child pornography in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934 [hereinafter UCMJ]. The military judge sentenced appellant to a bad-conduct discharge, ten months confinement, forfeiture of \$1,937.00 pay per month for ten months, and reduction to Private E-1.

The case is before the court for review pursuant to Article 66, UCMJ. After considering the entire record of trial, appellate counsel's allegation of error regarding the adjudged forfeitures in appellant's case,¹ and the matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A.

¹ The appellant's case was "submitted on its merits;" however, in a footnote appellate counsel noted that the adjudged forfeitures, \$1,937.00/pay per month for ten months, exceed the maximum authorized monthly forfeitures in appellant's case. Apparently the Military Judge calculated forfeitures at appellant's trial pay grade of E-5 as opposed to his adjudged reduced pay grade of E-1, as required by Rule for Courts-Martial [hereinafter R.C.M.] 1003(b)(2).

1982), we find one matter that warrants discussion and relief, specifically the adjudged forfeitures.

LAW AND DISCUSSION

Article 19, UCMJ, limits forfeitures at a special court-martial to two-thirds pay per month for a maximum period of twelve months. Rule for Courts-Martial 1003(b)(2) states “the maximum forfeiture shall be based on the grade to which the accused is reduced.” At the time of trial, appellant was a Sergeant E-5 with over ten years of service. His base pay was \$2,906.70 per month.² The base pay for a Soldier with similar time in service serving in the lowest enlisted grade, Private E-1, was \$1,447.20. *See* 2010 Military Pay Table. We agree with appellate counsel, finding the military judge erred when calculating two-thirds forfeiture of monthly pay using appellant’s E-5 base pay as opposed to the base pay associated with his adjudged reduction to E-1. Applying two-thirds to \$1,447.20, appellant’s base pay at the reduced grade, results in forfeiture of \$964.00 pay per month for ten months.³

CONCLUSION

Having considered appellant’s remaining allegations of error contained in his *Grostefon* matters, we conclude they are without merit. The finding of guilty as approved by the convening authority is affirmed. On consideration of the entire record, we affirm only so much of the sentence as provides for a bad-conduct discharge, ten months confinement, forfeiture of \$964.00 pay per month for ten months, and reduction to Private E-1. All rights, privileges, and property of which appellant has been deprived by virtue of that portion of his approved sentence set aside by this decision are ordered restored. *See* Articles 58b(c) and 75(a), UCMJ.



FOR THE COURT:

A handwritten signature in black ink, appearing to read "Malcolm H. Squires, Jr.", is written over a white background.

MALCOLM H. SQUIRES, JR.
Clerk of Court

² Two-thirds of \$2,906.70 equals \$1,937.80; rounding to the nearest whole dollar without rounding up results in forfeiture, as announced by the court, of \$1,937.00 pay per month for ten months. “Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last.” R.C.M. 1003(b)(2).

³ Two-thirds of \$1,447.20 equals \$964.80; rounding to the nearest whole dollar without rounding up results in forfeiture of \$964.00 pay per month for ten months.