# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
TOZZI, CAMPANELLA, and CELTNIEKS
Appellate Military Judges

**UNITED STATES, Appellee**
**v.**
**Private First Class WILLIE PADILLA**
**United States Army, Appellant**

ARMY 20130874

Headquarters, 1st Cavalry Division
Rebecca Connally, Military Judge
Colonel R. Tideman Penland, Jr., Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Captain Ryan T. Yoder, JA (on brief).

For Appellee: Colonel John P. Carrell, JA; Major A.G. Courie, III, JA; Major John K. Choike, JA; Captain Jihan Walker, JA (on brief).

23 April 2015

---
SUMMARY DISPOSITION
---

CAMPANELLA, Judge:

A military judge sitting as a special court-martial, convicted appellant, pursuant to his pleas, of one specification of desertion and two specifications of absence without leave terminated by apprehension in violation of Articles 85 and 86, Uniform Code of Military Justice, 10 U.S.C. §§ 885, 886 (2012) [hereinafter UCMJ]. The military judge sentenced appellant to a bad-conduct discharge, confinement for ten months, and reduction to the grade of E-1. Pursuant to a pretrial agreement, the convening authority only approved so much of the sentence as provided for a bad-conduct discharge, confinement for six months, and reduction to the grade of E-1. Prior to action, the convening authority denied appellant's request for deferral of automatic forfeitures until action. At action, the convening authority granted appellant's request for waiver of automatic forfeitures for a period of six months for the benefit of appellant's dependents, effective the date of action.

This case is before us for review us pursuant to Article 66, UCMJ. Appellant raises one assignment of error, namely dilatory post-trial processing. Appellant argues the prejudice he suffered, as a result of the government's dilatory post-trial processing, was the convening authority's ineffectual waiver of automatic forfeitures for a period of six months for the benefit of his dependents.

Appellant's sentence, which included a punitive discharge but no forfeiture of pay, was adjudged on 9 October 2013. However, by operation of law, appellant was subject to automatic forfeiture of two-thirds of all pay due during appellant's period of confinement. UCMJ art. 58b(a)(1). Appellant was released from confinement on 5 February 2014, thus serving 120 days confinement.

Appellant submitted his clemency submission after his release from confinement. In those submissions, he requested, among other relief, the convening authority waive automatic forfeitures for the benefit of appellant's dependents for a period of six months. Appellant's clemency submission did not note the convening authority would have to retroactively waive those forfeitures. Furthermore, the convening authority could only waive automatic forfeitures for the 120 days in which appellant was confined.

The staff judge advocate recommended the convening authority grant appellant's request for waiver of automatic forfeitures. The convening authority approved this request, and the Convening Authority's Initial Action included the following language:

> The automatic forfeiture of pay required by Article 58b, UCMJ is waived *effective this date* for a period of six (6) months with direction that these funds be paid to the dependants of the accused.

(emphasis added).

By that time, appellant had already served his confinement and been released onto excess leave. The timing of the action meant appellant's family would not benefit as apparently intended by the convening authority. Based on the contradictory nature of the outcome, it appears the convening authority's action did not match his intent. We therefore return this case for a new review and action to ensure the intent of the convening authority is carried out. In taking action again,

the convening authority may retroactively waive forfeitures for a period of 120 days, if this outcome is what he intended.*

## CONCLUSION

The Convening Authority's Initial Action, dated 13 May 2014, is set aside. The record of trial is returned to The Judge Advocate General for a new staff judge advocate post-trial recommendation and new action by the same or a different convening authority in accordance with Article 60(c)-(f), UCMJ.

Senior Judge TOZZI and Judge CELTNIEKS concur.

FOR THE COURT:

MALCOLM H. SQUIRES, JR.
Clerk of Court

* By setting aside the convening authority's action, appellant's other claims, including those raised personally pursuant to *United States v. Grostefon*, 12 M.J. 431 (1982), are not yet ripe for consideration. *See* UCMJ art. 66(c) ("[T]he Court of Criminal Appeals may act only with respect to the findings and sentence approved by the convening authority.").