

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
CAIRNS, KAPLAN, and MERCK
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist PAUL S. WORRELL
United States Army, Appellant

ARMY 9601261

U.S. Army Military District of Washington
L. K. Webster, Military Judge

For Appellant: Major Leslie A. Nepper, JA; Major Holly S. G. Coffey, JA; Captain Patricia A. Harris, JA (on brief filed with Court of Appeals for the Armed Forces) (no pleadings filed with this court).

For Appellee: Colonel Joseph E. Ross, JA; Lieutenant Colonel Frederic L. Borch III, JA; Major Lyle D. Jentzer, JA; Captain Troy A. Smith, JA (on brief filed with Court of Appeals for the Armed Forces) (no pleadings filed with this court).

20 August 1998

MEMORANDUM OPINION ON REMAND

Per Curiam:

On 19 November 1997, this court affirmed the findings of guilty and the sentence in appellant's case. On 10 July 1998, the United States Court of Appeals for the Armed Forces remanded this case to our court solely for consideration of appellant's claim that his sentence was unlawfully executed in violation of the ex post facto clause of the United States Constitution. *See United States v. Gorski*, 47 M.J. 370 (1997).

Appellant's sentence as affirmed by this court was lawful. If appellant's sentence was executed in an unlawful manner, his remedy is administrative in nature. *See Gorski*, 47 M.J. at 375-76 (Cox, C.J., concurring). Appellant may obtain relief pursuant to administrative procedures established by the Defense Finance and Accounting Service for recoupment of forfeitures taken in reliance on the provisions of Articles 57(a)(1) and 58b, Uniform Code of Military Justice, 10 U.S.C. §§ 857(a)(1) and 858b (1997).

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credit for forfeitures already withheld from his pay as a result of Article 15 punishment for offenses of which he was later convicted by court-martial. We are aware that the operation of Article 58b, UCMJ, effectively prevents us from restoring the Article 15 forfeitures to appellant.⁸ We can, however, grant appropriate relief by disapproving one month of the approved confinement and one month of the approved forfeiture, concurrently. Such action will convert one month of appellant's confinement time into "good time" for which he will be entitled to pay. One month's pay will more than compensate for the few days confinement and monetary forfeitures he failed to receive pursuant to *Pierce*.

DECISION

The findings of guilty of Specifications 3, 5, and 6 of Charge V are set aside and those specifications are dismissed. The remaining findings of guilty are affirmed. Reassessing the sentence on the basis of the errors noted and the entire record, and applying the criteria of *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), the court affirms only so much of the sentence as provides for a bad-conduct discharge, confinement for three months, and forfeiture of \$583.00 pay per month for three months.

Acting Chief Judge EDWARDS and Judge CAIRNS concur.

FOR THE COURT:



JOSEPH A. NEURAUTER
Clerk of Court

(... continued)

absentees are entitled to no pay so there was no pay to which credits could be applied.

⁸ Article 58b, UCMJ, mandates that a soldier who is sentenced by a special court-martial to a bad-conduct discharge and confinement for six months or less will automatically forfeit 2/3 pay per month for the period of confinement.