

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MERCK, CURRIE, and NOVAK
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist ROSCHAN D. HALL
United States Army, Appellant

ARMY 9900427

U.S. Army Air Defense Artillery Center and Fort Bliss
J. P. Galligan, Military Judge

For Appellant: Colonel Adele H. Odegard, JA; Lieutenant Colonel David A. Mayfield, JA; Major Jonathan F. Potter, JA; Captain Steven P. Haight, JA (on brief).

For Appellee: Colonel David L. Hayden, JA; Lieutenant Colonel Edith M. Rob, JA; Major Anthony P. Nicastro, JA (on brief).

16 April 2001

MEMORANDUM OPINION

Per Curiam:

A military judge sitting as a general court-martial convicted the appellant, pursuant to mixed pleas, of absence without leave, possession of cocaine, and disorderly conduct, in violation of Articles 86, 112a, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 912a, and 934 [hereinafter UCMJ]. The convening authority approved the adjudged sentence to a bad-conduct discharge, confinement for four months, forfeiture of all pay and allowances, and reduction to Private E1. This case is before the court for mandatory review pursuant to Article 66, UCMJ.

The appellant asserts, *inter alia*,¹ and the government concedes that the staff judge advocate (SJA) failed to comment on an allegation of legal error in the

¹ The appellant also asserts, and the government concedes, that the convening authority's action and the promulgating order omitted mention of fifty-one days of credit against the sentence to confinement, even though the credit was specifically mentioned in the staff judge advocate's recommendation. Fortunately, the

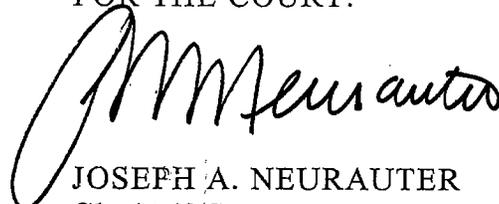
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appellant's post trial matters submitted pursuant to Rule for Courts-Martial [hereinafter R.C.M.] 1105. Rule for Courts-Martial 1106(d)(4) mandates that when an appellant's R.C.M. 1105 submission alleges legal error, the SJA's recommendation "shall state" whether "corrective action on the findings or sentence should be taken," (emphasis added). The SJA's burden is not great: "The response may consist of a statement of agreement or disagreement with the matter raised by the accused. An analysis or rationale for the staff judge advocate's statement, if any, concerning legal errors is not required." R.C.M. 1106 (d)(4). The SJA failed to perform this simple task.

Although we could return this case for a new review and action, we elect not to send it back to the original convening authority. Cf. *United States v. Griffis*, ARMY 20000851 (Army Ct. Crim. App. 9 Mar. 2001) (unpub.); *United States v. Yarborough*, 36 M.J. 1071 (A.C.M.R. 1993).² We also share our superior court's concern that a different convening authority, far removed from the appellant and his offenses, "would not necessarily be an [appellant's] best chance for clemency." *United States v. Wheelus*, 49 M.J. 283, 288 (1998). Instead, to moot any claim of possible prejudice, we will provide meaningful relief at the appellate level. UCMJ art. 66(c).

The findings of guilty are affirmed. Reassessing the sentence on the basis of the error noted and the entire record, the court affirms only so much of the sentence as provides for a bad-conduct discharge, confinement for three months, and reduction to Private E1. The appellant will be credited with fifty-one days of credit against the sentence to confinement.

FOR THE COURT:


JOSEPH A. NEURAUTER
Clerk of Court

(... continued)

confinement facility correctly computed the appellant's confinement, including the credit.

² In addition to the omission of confinement credit, the promulgating order also erroneously reflects that the appellant pled guilty to a lengthy absence without leave, when he actually only pled guilty by exceptions and substitutions to a failure to repair.