IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S, Appellee	BRIEF ON BEHALF OF APPELLEE
v.	USCA Dkt. No. 13-0459/AR
Private (E-1) **ROLLAN M. MEAD,** United States Army, Appellant	Crim.App. Dkt. No. 20110717

SAMUEL GABREMARIAM
Captain, JA
Appellate Government Counsel
Office of The Judge Advocate
General, United States Army
9275 Gunston Road
Fort Belvoir, Virginia 22060
Samuel.Gabremariam.mil@mail.mil
Lead Counsel
Phone: (703) 693-0778
U.S.C.A.A.F. Bar No. 35747

CATHERINE L. BRANTLEY
Major, JA
Branch Chief, Government
Appellate Division
U.S.C.A.A.F. Bar No. 35567

ROBERT A. RODRIGUES
Major, JA
Branch Chief, Government
Appellate Division
U.S.C.A.A.F. Bar No. 35723

JOHN P. CARRELL
Colonel, JA
Chief, Government
Appellate Division
U.S.C.A.A.F. Bar No. 36047

Index of Brief

Issue Presented:

WHETHER THE ARMY COURT INCORRECTLY RULED THAT PIERCE CREDIT MAY BE APPLIED AGAINST THE ADJUDGED SENTENCE WHERE THIS RESULTS IN NO RELIEF TO APPELLANT AND WHETHER THE ARMY COURT INCORRECTLY RULED THAT PAY LOST AS A RESULT OF PRIOR REDUCTION UNDER ARTICLE 15, UCMJ, NEED NOT BE RESTORED TO APPELLANT.

Statement of Statutory Jurisdiction 1

Statement of the Case 2

Statement of Facts 2-5

Issue 6

Summary of Argument 6-7

Standard of Review 7

Law and Analysis 7-17

Conclusion 18

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

Case Law

United States Court of Appeals for the Armed Forces

United States v. Edwards,
42 M.J. 381 (C.A.A.F. 1995)..... 10

United States v. Fischer,
61 M.J. 415 (C.A.A.F. 2005)..... 7,12

United States v. Gammons,
51 M.J. 169 (C.A.A.F. 1999)..... 7-9
13,14

United States v. Josey,
58 MJ 105 (C.A.A.F. 2003)..... 14

United States v. Kreutzer,
70 M.J. 444 (C.A.A.F. 2012)..... 12

United States v. Pierce,
27 M.J. 367 (C.M.A, 1989)..... 7,8,13
14

United States v. Rosendahl,
53 M.J. 344 (C.A.A.F. 2000)..... 15

United States v. Spaustat,
57 M.J. 256 (C.A.A.F. 2002)..... 12

United States v. Williams,
68 M.J. 252 (C.A.A.F. 2010)..... 12

Courts of Criminal Appeals

United States v. Mead,
72 M.J. 515 (Army Ct. Crim. App. 2013)..... 2

Statutes

Uniform Code of Military Justice

Article 13, 10 U.S.C. § 813..... 11-13

Article 15, 10 U.S.C. § 815..... 6-8, 14-16

Article 60, 10 U.S.C. § 860..... 17

Article 66(b), 10 U.S.C. § 866(b)..... 1

Articles 67(a)(3), 10 U.S.C. § 867 (a)(3)..... 2

Article 111, 10 U.S.C. § 911..... 2

Article 112a, 10 U.S.C. § 912a..... 2

Article 119, 10 U.S.C. § 912..... 2

Other Authorities

Manual for Courts-Martial, United States, 2008 Edition

R.C.M. 802.....3,9

R.C.M. 1001(b)(2).....10

R.C.M. 1105(b).....17

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S, Appellee	BRIEF ON BEHALF OF APPELLEE
v.	Crim. App. Dkt. No. 20110717
Private (E-1) **ROLLAN D. MEAD,** United States Army, Appellant	USCA Dkt. No. 13-0459/AR

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES:

Granted Issue

I. WHETHER THE ARMY COURT INCORRECTLY RULED THAT PIERCE CREDIT MAY BE APPLIED AGAINST THE ADJUDGED SENTENCE WHERE THIS RESULTS IN NO RELIEF TO APPELLANT AND WHETHER THE ARMY COURT INCORRECTLY RULED THAT PAY LOST AS A RESULT OF PRIOR REDUCTION UNDER ARTICLE 15, UCMJ, NEED NOT BE RESTORED TO APPELLANT.

Statement of Statutory Jurisdiction

The United States Army Court of Criminal Appeals (Army Court) reviewed this case pursuant to Article 66(b), Uniform Code of Military Justice (UCMJ).[1] The statutory basis for this Honorable Court's jurisdiction is Article 67(a)(3), UCMJ, which permits review in "all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause

[1] UCMJ, Art. 66(b), 10 U.S.C. § 866(b).

shown, the Court of Appeals for the Armed Forces (C.A.A.F.) has granted a review."[2]

Statement of the Case

A military judge, sitting as a general court-martial, convicted appellant, pursuant to his pleas, of one (1) specification of driving under the influence of alcohol, one (1) specification of wrongful use of amphetamine, and one (1) specification of involuntary manslaughter, in violation of Articles 111, 112a, and 119, Uniform Code of Military Justice, 10 U.S.C. §§ 911, 912a, and 919 (2008). The military judge sentenced appellant to forfeit all pay and allowances, thirty-eight (38) months of confinement, and a bad-conduct discharge.[3] Pursuant to a pretrial agreement, the convening authority approved only twenty-four (24) months of confinement, but otherwise approved the sentence.[4]

On 25 February 2013, the Army Court affirmed the findings and sentence.[5] On 27 March 2013, appellant requested reconsideration of the Army Court's opinion and the request was denied on 8 April 2013. This Court granted appellant's petition for grant of review of the Army Court's decision on 5 August 2013.

---

[2] UCMJ, Art. 67(a)(3), 10 U.S.C. § 867(a)(3).
[3] Joint Appendix (JA) 31.
[4] JA 53.
[5] JA 7; *United States v. Mead,* 72 M.J. 515 (Army Ct. Crim. App. 2013).

Statement of Facts

In accordance with his plea, appellant was convicted of wrongfully using amphetamine at trial, an offense that he had previously received nonjudicial punishment (NJP) for under Article 15, UMCJ.[6] When he received his NJP, appellant held the rank of specialist (E-4). Appellant's commander imposed the following punishment: reduction to E-1, forfeiture of $723 (suspended for 180 days), extra duty for 45 days, and an oral reprimand.[7]

At trial, appellant introduced evidence of his prior punishment under Article 15 through his stipulation of fact.[8] In offering to plead guilty, appellant expressly agreed that the stipulation of fact could be used during sentencing.[9]

After an RCM 802 conference where the parties discussed the NJP, the military judge stated on the record his intent to apply *Pierce* credit to the adjudged sentence.[10] Appellant did not object to the military judge's announced intent.[11] Similarly, later in the trial, the defense had no objection to the record of the NJP being admitted into evidence by the government.[12]

---

[6] JA 40.
[7] JA 40.
[8] JA 37.
[9] JA 35.
[10] Supplemental Joint Appendix (SJA) 1.
[11] SJA 1.
[12] JA 13.

The military judge sentenced appellant to forfeit all pay and allowances, thirty-eight months confinement, and a bad conduct discharge.[13] The military judge then announced the following:

> When arriving at the adjudged sentence in this case, I took into account the non-judicial punishment, or NJP, the accused has already received under Article 15 of the Uniform Code of Military Justice. As a result of the NJP that was imposed by his battalion commander, [LTC BH], for the wrongful use of amphetamine that he was charged with and found guilty of in the Specification of Charge II. If the accused had not received prior NJP for the offense listed in the Specification of Charge II, I would have adjudged an additional two months of confinement, in addition to what I announced.
>
> In compliance with *United States* [*v.*] *Pierce* [and] *United States v. Flynn*..., I am going to state, on the record, the specific credit I gave the accused for his prior punishment in arriving at my adjudged sentence. In arriving at the adjudged sentence, I gave the accused credit for one 30-day month of confinement credit for the 45 days of extra duty he served, as a result of the NJP. In addition, I gave the accused one 30-day month of confinement credit for the reduction to [E-1] he served, as a result of the reduction at the NJP proceeding, from February 2010 to the present. As the accused was already an [E-1] at the time of this court-martial, I did not adjudge a reduction. However, if the accused had been an [E-4] today, I would have adjudged a reduction to [E-1].
>
> While case law would indicate that I have no duty to apply specific confinement credit against the adjudged sentence as a result of a prior reduction to [E-1] at an NJP proceeding, I believe it is within my discretion to do so, and

[13] JA 31.

> I have chosen to do so in this case. Under the circumstances of this case, I have determined that it is appropriate to credit the accused with an additional 30-days of confinement against the confinement I ultimately adjudged, to account for the period he served as an [E-1], between February 2010 and the present.[14]

Appellant did not have any questions or objections about the military judge's *Pierce* credit calculations or the adjudged sentence.[15]

The military judge then considered the quantum portion of appellant's pretrial agreement. The military judge stated, "[m]y understanding of the effect of the pretrial agreement on the sentence is that the convening authority may approve the adjudged forfeiture, as well the adjudged bad-conduct discharge, but must disapprove any confinement in excess of 24 months."[16] Both counsel agreed with the military judge's understanding.[17]

---

[14] JA 31-33.
[15] JA 33.
[16] JA 34.
[17] JA 34.

GRANTED ISSUES AND ARGUMENT

I. WHETHER THE ARMY COURT INCORRECTLY RULED THAT PIERCE CREDIT MAY BE APPLIED AGAINST THE ADJUDGED SENTENCE WHERE THIS RESULTS IN NO RELIEF TO APPELLANT AND WHETHER THE ARMY COURT INCORRECTLY RULED THAT PAY LOST AS A RESULT OF PRIOR REDUCTION UNDER ARTICLE 15, UCMJ, NEED NOT BE RESTORED TO APPELLANT.

Summary of Argument

Appellant was given complete credit for the NJP he received as a result of wrongfully using amphetamines. As gatekeeper of his NJP, appellant brought that NJP to the military judge's attention through the stipulation of fact. The military judge clearly indicated his intent to apply Pierce credit to the adjudged sentence with appellant's concurrence. Further, the military judge stated the specific credit he gave the appellant for wrongfully using amphetamines. Accordingly, appellant would receive an inappropriate windfall were this Court to apply *Pierce* credit to his approved sentence.

The Government respectfully submits that appellant should not receive *Pierce* credit for the reduced pay resulting from appellant's reduction in rank. *Pierce* credit applies to punishment under Article 15, UCMJ. The statutory scheme of Article 15 does not include reduced pay as a punishment. Reduced pay, while real, is a collateral consequence of

reduction of rank and is so qualitatively different from other punishments that conversion is not required as a matter of law. Moreover, reduced pay is an effect of a punishment - but is not punishment as contemplated by the statute and therefore, *Pierce* credit is not appropriate for appellant's reduced pay.

Standard of Review

The standard of review for application of *Pierce* sentence credit is de novo.[18] Where *Pierce* credit is applicable, "it is the responsibility of the military judge, the convening authority, or the [appellate courts], as appropriate, to make [the correct] assessment."[19]

Law and Analysis

According to Article 15(f), UCMJ, and *United States v. Pierce*, imposition of NJP does not preclude court-martial of a servicemember for the same serious offense; however, that servicemember may not be twice *punished* for the same offense.[20] Based on the principles of former jeopardy credit, the *Pierce* court held that the servicemember must be given "*complete* credit for any and all non-judicial punishment suffered: day-for-day, dollar-for-dollar, stripe-for-stripe."[21]

I. The Army Court correctly ruled that Pierce Credit may be applied against the adjudged sentence.

---

[18] *United States v. Fischer*, 61 M.J. 415, 418 (C.A.A.F. 2005)
[19] *United States v. Gammons*, 51 M.J. 169, 184 (C.A.A.F. 1999).
[20] *United States v. Pierce*, 27 M.J. 367, 369 (C.M.A, 1989)
[21] *Id.*

The purpose of Article 15(f), UCMJ, is to prevent the accused from being punished twice for the same offense as a matter of statutory law even though such successive punishment is otherwise permissible as a matter of constitutional law. Article 15(f) provides an accused with two means of enforcing this statutory prohibition: (1) a motion to dismiss the charge on the grounds of former punishment for a minor offense; and (2) as the gatekeeper to his NJP, whether an NJP for a serious offense will be brought to the attention of the sentencing authority or the convening authority for credit.[22]

Appellant, as the gatekeeper to his prior NJP, elected to reveal it to the court-martial for consideration on sentencing.[23] First, appellant invited his prior NJP into his court-martial through his stipulation of fact.[24] Appellant voluntarily entered into the stipulation of fact believing that it was in his best interest to do so.[25] He included his prior NJP and agreed that the contents of the stipulation were admissible into evidence against [][him] for findings and sentencing on all charged offenses."[26]

---

[22] *Gammons*, 51 M.J. at 180.
[23] *Pierce*, 27 M.J. at 369
[24] JA 37.
[25] SJA 2.
[26] JA 35.

Second, appellant did not object when the military judge explicitly informed him that he would consider using the stipulation of fact to determine an appropriate sentence.[27] The military judge stated that during an RCM 802 session he discussed the prior NJP with appellant's counsel and then covered that discussion on the record:

> We, also, went over issues of whether there'd been any pretrial confinement or pretrial punishment of the accused, as well as discussed the fact that the accused has, apparently, been punished for what has been charged as a specification of Charge II, that is the wrongful use of Amphetamines at a prior non-judicial punishment proceeding, which *would appear to require that the accused receive Pierce Credit toward any sentence adjudged by this court.*[28] (emphasis added).

Appellant agreed with the military judge's recollection of the RCM 802 conference and did not object to his *Pierce* credit being applied to the adjudged sentence.[29]

Moreover, appellant did not object when the government introduced the DA Form 2627 that memorialized his NJP into evidence or when the government referenced it during its

---

[27] SJA 2.
[28] SJA 1.
[29] In *Gammons*, the trial counsel, at the outset of the sentencing proceeding, presented various positive and negative items from the appellant's service record, including the NJP, the military judge brought the NJP to the attention of defense counsel. The military judge ascertained that the defense was aware of its contents and intended to make affirmative use of the NJP in its sentencing case. In this case, the NJP was discussed on the record even earlier and the military judge verbalized his understanding and intent in regards to the prior NJP. *Gammons*, 51 M.J. at 180.

sentencing argument.[30] The lack of objection supports the fact that appellant concurred with the use of the NJP for sentencing purposes, especially since appellant also raised the effects of the NJP himself during sentencing.[31] Therefore, the facts support the conclusion that appellant squarely put the *Pierce* issue before the sentencing authority, rather than leaving it to the convening authority.[32]

This Court has held that a military judge may apply *Pierce* credit in determining the adjudged sentence when the accused raises the issue of a prior NJP for the same offense.[33] It further held that where the military judge does so, the convening authority has no further duty in this regard.[34] In this instance, appellant made a tactical decision to bring his NJP to the attention of the sentencing authority, who subsequently provided him with *Pierce* credit, thereby

---

[30] The failure to object constituted waiver under the applicable rules. RCM 1001(b)(2) ("[o]bjections not asserted are waived" with respect to sentencing matters concerning personnel records of an accused); RCM 1001(g) (failure to object to improper argument constitutes waiver). *Gammons,* 51 M.J. at 181.
[31] JA 27.
[32] This decision was a sound trial strategy. Appellant perhaps thought that he could "beat the deal" and receive a sentence lighter than his pretrial agreement. The combination of flesh-and-blood sentencing witnesses, appellant's own unsworn statement, and the evidence of his prior NJP might persuade a sentencing authority to give a lenient sentence. In any regard, that evidence is likely more powerful at a sentencing hearing, as opposed to the cold paper record of a clemency request.
[33] *United States v. Edwards*, 42 M.J. 381, 383 (C.A.A.F. 1995).
[34] *Edwards*, 42 M.J. at 381.

eliminating the requirement for the convening authority to do so.

Specifically, the military judge, after citing *Pierce*, announced that he took into account appellant's prior NJP when deliberating on the sentence.[35] He expressly took two months confinement off of appellant's sentence as *Pierce* credit. The military judge stated on the record the specific credit he gave appellant: 30 days confinement credit for the 45 days restriction and 30 days of confinement credit for the reduction to E-1. Neither appellant nor his counsel had any questions about the military judge's *Pierce* calculation or adjudged sentence. By now asking this Court to apply *Pierce* credit to his approved sentence, appellant asks for a benefit which he has already received.

Appellant claims that his *Pierce* credit was illusory. In fact, appellant negotiated a favorable pretrial agreement which limited his confinement to 24 months. It is to appellant's credit that he successfully bargained for an agreement that was considerably lower than the adjudged sentence. The 60 day reduction of confinement by the military judge was a tangible and non-illusory benefit, however, the pretrial agreement simply provided a much greater benefit.

---

[35] JA 31.

Finally, appellant questions why this Court, "[s]hould require military judges to apply credit for Article 13, UCMJ, violations against the approved sentence, yet allow them to apply *Pierce* credit against the adjudged sentence."[36] To support his proposition that this Court should mandate the application of *Pierce* credit to the adjudged sentence, appellant relies on *United States v. Spaustat*.[37] In *Spaustat*, this Court held that the military judge correctly applied pretrial confinement credit to the lesser confinement sentence provided for in the pretrial agreement rather than the adjudged sentence. However, this rationale overlooks the fact that Article 13 pretrial confinement credit materially differs from *Pierce* credit. Article 13, UCMJ, prohibits the government from: (1) purposefully imposing punishment or penalty on an accused before guilt is established at trial, and (2) subjecting an accused to pretrial confinement conditions more rigorous than circumstances require to ensure an accused's presence at trial.[38] Article 13, UCMJ, by its terms, only applies to persons "held for trial."[39] Alleged violations of Article 13, UCMJ, require scrutinizing the Government's purpose or intent to punish.[40] It is a tool to enforce the prohibition against illegal pretrial punishment and

---

[36] Appellant Br. 12.
[37] *United States v. Spaustat*, 57 M.J. 256 (C.A.A.F. 2002).
[38] *Fischer*, 61 M.J. at 418.
[39] *United States v. Kreutzer*, 70 M.J. 444, 447 (C.A.A.F. 2012).
[40] *United States v. Williams*, 68 M.J. 252, 257 (C.A.A.F. 2010).

illegal pretrial confinement against the government. Thus, it fittingly penalizes the government for violations of an accused's rights.

Conversely, the purpose of *Pierce* credit is to ensure appellant is not punished twice for the same offense.[41] Unlike credit under Article 13, UCMJ, there is no misconduct on the part of the government that is necessarily implicated.[42] It simply mandates "complete credit" when an accused had received NJP for the same offense for which he stands accused of at a court-martial.[43] Moreover, Article 15(f), UCMJ, provides an accused its own mechanism to ensure that it is enforced in accordance with an accused's trial strategy.[44] Therefore appellant retains the discretion as to when he receives the credit.

It is illogical to mandate that *Pierce* credit be applied to the approved sentence when the accused can introduce it to the sentencing authority and receive complete credit for the prior NJP at trial. Such a mandate would "penalize" the government by further reducing the sentence that the court has assessed to be the price that the accused should pay society, even after the accused has been provided with appropriate *Pierce* credit.

---

[41] *Pierce*, 27 M.J. at 369.
[42] *Pierce*, 27 M.J. 369.
[43] *Id.*
[44] *Gammons*, 51 MJ at 180.

Moreover, such an inelastic rule would apply, even when there is no evidence that appellant's NJP and subsequent court-martial involved any "sinister design, evil motive, or bad faith" on the part of the government.[45] This would provide appellant with an additional and unwarranted windfall.

II. The Army Court correctly ruled that pay lost as a result of prior reduction under Article 15, UCMJ, need not be restored to appellant.

This Court has long recognized that punishments administered through NJP and those adjudged by courts-martial are not always identical and thus not easily susceptible to reconciliation.[46] To reconcile forms of punishment, the Court in *Pierce* recommended adoption of a "Table of Equivalent Punishments," similar to that which appeared in the 1969 version of the Manual for Courts-Martial.[47] Congress, however, has never promulgated such a table or similar mechanism for converting NJP served to credit against adjudged sentences.[48]

At most lost pay is a collateral consequence of reduction. It is not part of the statutory punishment scheme of Article 15, and thus, is not subject to *Pierce* credit. This Court has acknowledged that "[a]lthough a change in rank has a clear monetary consequence with respect to basic pay, an individual's

---

[45] *Gammons*, 51 M.J. at 179.
[46] *Pierce*, 27 M.J. at 369.
[47] *Pierce*, 27 M.J. at 369.
[48] *Gammons*, 51 M.J. at 183-84.

rank in the military involves far more than money."[49] It differentiates members of the armed forces from each other and provides a mechanism in which responsibility and accountability is delegated.[50] Therefore, many central features of military life, such as assignments and privileges have a direct relationship with a servicemember's rank. In addition, rank corresponds with varying levels of responsibility and accountability which in turn require ascending degrees of public trust. Therefore, "the factors applicable to imposing a reduction in rank reflect highly individualized judgments about military status, it is not appropriate to impose a generally applicable monetary formula for crediting periods of confinement or other punishments against a sentence to reduction."[51] Reprimands, reductions in rank, and punitive separations are so qualitatively different from other punishments that conversion is not required as a matter of law. Moreover, this Court has acknowledged that *Pierce* does not require credit against punishments unique to military life where there is no readily measurable equivalence between confinement and the personnel related punishments of reduction and punitive separation.[52]

---

[49] *United States v. Josey*, 58 MJ 105, 108 (C.A.A.F. 2003).
[50] *Id.*
[51] *Josey*, 58 MJ at 108.
[52] *United States v. Rosendahl*, 53 M.J. 344, 348 (C.A.A.F. 2000).

By enacting Article 15, UCMJ, Congress limited commanders' ability to impose NJP to a narrow class of punishments.[53] Article 15(b)(2)(H)(iii) defines a punishment of "forfeiture of not more than one-half of one month's pay per month for two months." Congress does not include as part of the punishment of forfeitures any lost pay due to reduction in rank. While the difference in pay from Specialist to Private is quite real, that lower paycheck is merely a collateral consequence of NJP, rather than a "punishment" within the statutory scheme of Article 15. Although *Pierce* credit precludes double punishment it does not provide relief for every collateral consequence of punishment.[54] Appellant requests this Court to adopt a specific formula where he would be given 198 days of *Pierce* credit, which would be credit for far more punishment than the UCMJ allows under Article 15.[55]

In this instance, the military judge exercised his discretion and included 30 days of confinement credit for appellant's prior reduction to E-1. When an accused brings his

---

[53] *See also* Part V, para. 5, *M.C.M.* (2008 ed.) (The President's further narrowing of possible punishments); Army Reg. 27-10, Legal Services: Military Justice, table 3-1 (3 October 2011) (The Secretary's prescribed punishments available under Article 15).

[54] Appellant served as a Private (E-1) at the time of trial. Appellant could have mitigated the collateral consequence of his reduction by working toward promotion. Instead, appellant consumed alcohol to the point of intoxication, drove his car, and killed a fellow Soldier.

[55] Appellant Br. 18.

prior NJP to a military judge's attention, that military judge can craft a sentence that does not punish that accused twice for the offenses giving rise to the prior NJP. In appellant's case, the military judge took that very action. The military judge's sentence ensured that appellant was not punished twice:

> While case law would indicate that I have no duty to apply specific confinement credit against the adjudged sentence as a result of a prior reduction to [E-1] at an NJP proceeding, I believe it is within my discretion to do so, and I have chosen to do so in this case. Under the circumstances of this case, I have determined that it is appropriate to credit the accused with an additional 30-days of confinement against the confinement I ultimately adjudged, to account for the period he served as an [E-1], between February 2010 and the present.[56]

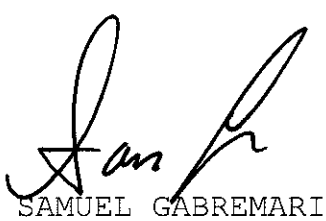
The military judge provided appropriate relief for appellant's reduction. At the time, appellant did not have any questions or objections about the military judge's application of *Pierce* credit.[57] This Court should treat the military judge's action as encompassing all collateral consequences of that reduction, including loss of pay and responsibilities. Appellant does not warrant any further relief because he elected to introduce his NJP to the sentencing authority and properly received *Pierce* credit.[58]

---

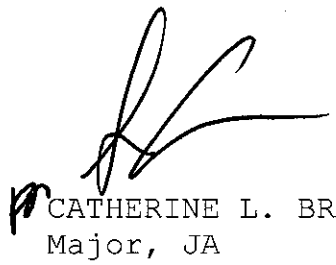
[56] JA 32-33.
[57] JA 33.
[58] As a general matter, in accordance with RCM 1105(b)(1), appellant is not precluded from requesting clemency for the NJP even after receiving *Pierce* credit from the sentencing authority. However, the convening authority would be under no

Conclusion

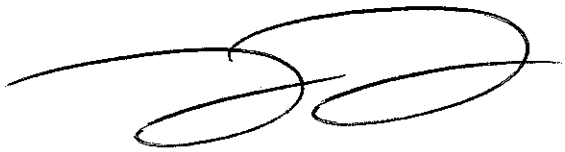
WHEREFORE, the Government respectfully requests that this Honorable Court affirm the decision of the Army Court and grant appellant no relief.



SAMUEL GABREMARIAM
Captain, JA
Appellate Government
Counsel
U.S.C.A.A.F. Bar No. 35747



CATHERINE L. BRANTLEY
Major, JA
Branch Chief, Government
Appellate Division
U.S.C.A.A.F. Bar. No. 35567



ROBERT A. RODRIGUES
Major, JA
Branch Chief, Government
Appellate Division
U.S.C.A.A.F. Bar No. 35723

JOHN P. CARRELL
Colonel, JA
Chief, Government
Appellate Division
U.S.C.A.A.F. Bar No. 36047

---

obligation to grant such a request and would retain the discretion to grant or deny appellant's request for any or no reason. UCMJ, Art. 60(c)(1), 10 U.S.C. § 860(c)(1).

CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This brief complies with the type-volume limitation of Rule 24(c) because:

This brief contains 4,358 words.

2. This brief complies with the typeface and type style requirements of Rule 37 because:

This brief has been typewritten in 12-point font, mono-spaced courier new typeface in Microsoft Word Version.

SAMUEL GABREMARIAM
Captain, Judge Advocate
Attorney for Appellee
September 18, 2013

CERTIFICATE OF FILING AND SERVICE

I certify that the original was electronically filed to efiling@armfor.uscourts.gov, the Honorable Clerk of Court's office and the Appellate Defense Counsel on 18 September 2013.

TIFFANI COX
Paralegal Specialist
Government Appellate Division
(703) 693-0846