position of a bad-conduct discharge would not necessarily cause accused's punitive separation but could result in giving him "an opportunity to prove himself." In addition, he drew attention to a defense exhibit, admitted without objection, in which accused's commander recommended his retention in the service; characterized the letter as "hearsay;" and argued that the United States "did not have the opportunity of . . . examining him in detail as to his opinion—if there were any exceptions to it—any additions or whether under the circumstances this is his true impression today."

We need not inquire whether trial counsel's argument was erroneous. While accused was sentenced to bad-conduct discharge, confinement at hard labor for six months, forfeiture of $50.00 per month for six months, and reduction to the grade of airman basic, the entire thrust of the remarks was calculated to obtain inclusion in the adjudged punishment of a punitive discharge. The supervisory authority's action ordered the probationary suspension of that penalty for the period of confinement and four months thereafter. We are now advised that the bad-conduct discharge and the unexecuted portion of the adjudged confinement and forfeitures were remitted on June 7, 1962.

As we perceive no real difference between remission of a discharge and its disapproval, such action serves to remove any prejudice flowing from the trial counsel's argument—assuming its impropriety—by complete elimination of that portion of the sentence to which his presentation addressed itself. United States v Johnson, 12 USCMA 602, 31 CMR 188. The questions before us are, accordingly, moot. United States v Fisher, 7 USCMA 270, 22 CMR 60; United States v Bedgood, 12 USCMA 16, 30 CMR 16; cf. United States v Prescott, 2 USCMA 122, 6 CMR 122.

The decision of the board of review is affirmed.

Chief Judge QUINN and Judge KILDAY concur.

UNITED STATES, Appellee

v

BILL G. WOOD, Master Sergeant, U. S. Air Force, Appellant

13 USCMA 217, 32 CMR 217

Courts-martial § 11 — competency of members — opinions based on rank of accused.

1. The fact that a member of a court trying a master sergeant for absence without leave and a number of larceny by check offenses indicated he was afraid the fact serious crimes were committed by one who thereby breached a position of responsibility as a senior noncommissioned officer might be a matter in aggravation did not indicate the member's disqualification as a matter of law where he further indicated he was unable to state, in the absence of other relevant factors, the impact of the single item of rank and in reply to a specific inquiry he indicated the matter might be either for or against the accused, depending on all the evidence.

Courts-martial § 11 — competency of members — knowledge of communication containing erroneous statements of law.

2. The fact that a court member had received a communication from a commander subordinate to the convening authority which concerned military justice and which contained some admittedly erroneous statements of law did not require the member's disqualification as a matter of law

where it appeared that it had been some 18 months since he received the communication, that he had not referred to the same for over a year, that he had no independent recollection of its contents, and that he affirmed he would determine such matters as were his concern as a court member pursuant to the law officer's instructions, uninfluenced by any out-of-court events.

Courts-martial § 11 — competency of members — opinions on rehabilitation.

3. The fact that a court member indicated agreement with a command communication indicating court members should not interfere in the field of rehabilitation did not require his disqualification as a matter of law where his examination as a whole showed he felt a court-martial could not itself rehabilitate anyone but he was willing to consider an accused's capacity for rehabilitation.

Courts-martial § 11 — competency of members — communication containing erroneous statements of law.

4. The fact that a court member was a member of a command that circulated a military justice circular containing some erroneous statements of law did not require his disqualification as a matter of law where he could not recall having received the circular and, if he did, it made no impression on him and, upon questioning as to certain concepts set forth in the circular, he expressed disagreement with them.

Courts-martial § 11 — competency of members — opinions based on rank of accused.

5. The fact that a member of a court trying a master sergeant for absence without leave and a number of larceny by check offenses indicated that, as a general matter, the amount of responsibility of an individual is determined by his position and a violation of that responsibility would weigh greater than violation of responsibility by an individual of a lesser stature did not require the member's disqualification as a matter of law where he indicated that each specific case would differ from another and he would evaluate the accused's case on the whole of the attendant facts.

Courts-martial § 11 — competency of members — opinions on worthless check offenses.

6. Certain Air Force directives pertaining to dishonored checks which counseled adherence to high standards and elimination of problems in this area and which set forth certain administrative control measures fell within the permissible area of military discipline and the fact that a member of a court trying an accused on a number of larceny by check charges expressed agreement with the general principle that the Air Force was opposed to writing bad checks and that one convicted criminally of such conduct should be punished in some way did not require the member's disqualification, particularly where he and all the other court members stated they were unaware of any command desire for any particular result in the accused's case and would decide the case solely on the evidence and the law officer's instructions.

Courts-martial § 66 — voir dire examination — propriety of questions.

7. Where one member had been questioned as to the effect of the worthless check directives on him and he had replied he would consider all the circumstances in deciding the accused's case and a second member had

given a substantially similar answer to the same question, an objection to asking the second member whether, in other words, he felt that even though he was a court member, he was also an Air Force officer and was obligated to enforce the mentioned directives, was properly sustained by the law officer since, not only were the directives properly within the area of military discipline, but also, the second member's answers were substantially the same as the first member's and the question asked was argumentative in nature.

Trial §§ 16–27 — mistrial — command influence.

8. Under the circumstances shown, the law officer properly denied a motion for a mistrial made after action on the challenges was complete and which was based on the same claim of command influence which was asserted during voir dire examination of the court members.

Trial § 27 — command influence on sentence.

9. Although a command letter on military justice commented on the seriousness of charges referred to a general court-martial and the thoroughness of investigation prior to reference to such a court and it stated charges which could be appropriately punished by a lesser court would not be so referred, the letter did not constitute improper command control affecting the sentence where it appeared that it was composed by the staff judge advocate of a command inferior to that convening the accused's general court-martial and was distributed so long prior to trial that most of the court members could not even recall receiving it and all stated that the accused's case would be decided on its own facts in accordance with the law officer's instructions.

No. 15,615

August 3, 1962

On petition of the accused below. ACM 17647, not reported below. Affirmed.

Lieutenant Colonel Wallace N. Clark argued the cause for Appellant, Accused. With him on the brief was *Colonel Joseph E. Krysakowski.*

Lieutenant Colonel Simpson M. Woolf argued the cause for Appellee, United States. With him on the brief was *Colonel Merlin W. Baker.*

Opinion of the Court

KILDAY, Judge:

I

Accused, a master sergeant who had served as first sergeant of the hospital, was tried by a general court-martial convened at England Air Force Base, Louisiana. He was convicted of a five-month absence without leave, violative of Article 86, Uniform Code of Military Justice, 10 USC § 886; and numerous specifications of larceny by check, contrary to Article 121 of the Uniform Code, 10 USC § 921, committed during the period of unauthorized absence. The court-martial sentenced accused to dishonorable discharge, confinement at hard labor for six months, forfeiture of $43.00 per month for that same period, and reduction to the lowest enlisted grade. The findings and sentence were, in turn, approved by the convening authority and affirmed by a board of review.

Thereafter, accused sought review by this Court, and we granted his petition in order to consider several issues developed during *voir dire* examination and relating largely to alleged improper command control. We shall treat with