

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman Basic WAYNE G. AUGSPURGER  
United States Air Force**

**ACM S30222 (f rev)**

**3 February 2006**

Sentence adjudged 13 September 2002 by SPCM convened at Eglin Air Force Base, Florida. Military Judge: Ann D. Shane.

Approved sentence: Bad-conduct discharge and confinement for 3 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Colonel Carlos L. McDade, Major Terry L. McElyea, and Major Andrew S. Williams.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major James K. Floyd, Major M. LeeAnn Summer, Major Linette I. Romer, Major Shannon J. Kennedy, and Major Michelle M. McCluer.

Before

**BROWN, MOODY, and FINCHER**  
Appellate Military Judges

**UPON FURTHER REVIEW**

**PER CURIAM:**

The appellant was convicted of one specification of wrongful use of marijuana, and one specification of drunk and disorderly conduct, in violation of Articles 112a, 134, UCMJ, 10 U.S.C. §§ 912a, 934. The convening authority approved the adjudged sentence of a bad-conduct discharge and confinement for 3 months. On 18 May 2004, this Court modified the finding of guilty as to the marijuana specification by exceptions and substitutions and affirmed the findings, as modified, and sentence. *United States v. Augspurgen*, ACM S30222 (A.F. Ct. Crim. App. 18 May 2004) (unpub. op.). On review, our superior court dismissed the marijuana specification in accordance with *United States*

*v. Seider*, 60 M.J. 36 (C.A.A.F. 2004) and *United States v. Walters*, 58 M.J. 391 (C.A.A.F. 2003). *United States v. Augspurger*, 61 M.J. 189 (C.A.A.F. 2005).

The case has been returned to us with instructions to either reassess the sentence or return the case to the convening authority for a rehearing. *United States v. Augspurger*, 61 M.J. 462 (C.A.A.F. 2005) (mem.). Applying the criteria set forth in *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), we conclude that we are unable to determine what sentence would have been imposed based solely on a conviction of a single instance of drunk and disorderly conduct. Therefore, we direct that the case be returned to The Judge Advocate General for remand to the convening authority, who may either order a rehearing on the sentence, approve a sentence of no punishment, or dismiss the remaining charge and specification. Unless the convening authority dismisses the remaining charge and specification, upon completion of the convening authority's subsequent action, the case shall be returned to this Court for further review. *See United States v. Johnson*, 45 M.J. 88, 89 (C.A.A.F. 1996).

OFFICIAL

ANGELA M. BRICE  
Clerk of Court