

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class CHARLES R. FRANKLIN
United States Air Force**

ACM 34375

3 December 2002

Sentence adjudged 26 July 2000 convened by GCM at Luke Air Force Base, Arizona. Military Judge: David F. Brash.

Approved sentence: Bad-conduct discharge, forfeiture of all pay and allowances, reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Timothy Murphy, Lieutenant Colonel Michael C. Barrett, and Major Maria A. Fried.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major John D. Douglas.

Before

BURD, PECINOVSKY, and EDWARDS
Appellate Military Judges

OPINION OF THE COURT

EDWARDS, Judge:

We have conducted a de novo review of the record of trial in accordance with Article 66(c), UCMJ, 10 U.S.C. § 866(c). “Such a review involves a fresh, impartial look at the evidence, giving no deference to the decision of the trial court on factual sufficiency beyond the admonition in Article 66(c), UCMJ, to take into account the fact that the trial court saw and heard the witnesses.” *United States v. Washington*, 57 M.J. 394, 399 (2002). In conducting this review, we are required to make our “own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt.” *Id.* We find that the evidence does not support a

finding of guilty as to the Charge and Specification beyond a reasonable doubt. Therefore the findings of guilty and sentence are set aside. In accordance with Article 66(d), UCMJ, 10 U.S.C. § 866(d), the Charge and Specification are

DISMISSED.

OFFICIAL

HEATHER D. LABE
Clerk of Court