

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	ACM 36508 (rem)
Appellee)	
)	
v.)	
)	ORDER
Airman Basic (E-1))	
BRANDON T. ROSE,)	
USAF,)	
Appellant)	En Banc

The Government’s Motion for Reconsideration of our 9 March 2011 decision on remand is granted. Upon further consideration of the remand orders in this case, our 9 March 2011 decision appears to exceed the authorized scope of the remand order of 9 November 2010 by taking additional action on the findings regarding Specifications 1, 2, and 3 of Charge V.

Our initial decision in this case set aside the findings of guilty as to Specifications 1, 2, and 3 of Charge V, affirmed the remaining findings of guilty, set aside the sentence, and authorized a rehearing on Specifications 1, 2, and 3 of Charge V and the sentence. *United States v. Rose*, 67 M.J. 630 (A.F. Ct. Crim. App.), *rev’d*, 68 M.J. 236 (C.A.A.F. 2009) (mem.). Upon remand to reconsider our finding of ineffective assistance of counsel regarding Specifications 1, 2, and 3 of Charge V, we again found ineffective assistance of counsel and set aside the findings of guilty as to Specifications 1, 2, and 3 of Charge V. *United States v. Rose*, ACM 36508 (f rev) (A.F. Ct. Crim. App. 11 June 2010) (unpub. op.), *rev’d*, 69 M.J. 426 (C.A.A.F. 2010) (mem.). We noted that “we previously affirmed the findings of guilty as to the remaining charges and specifications but set aside the sentence and authorized a rehearing with respect to Specifications 1, 2, and 3 of Charge V and the sentence...” *Id.*

However, the case was again remanded for us to again expressly act on those remaining charges and specifications and the sentence. *Rose*, 69 M.J. at 426. On 9 March 2011, a newly constituted en banc panel affirmed the remaining findings of guilty and, in acting on the sentence, reassessed the sentence after dismissing Specifications 1, 2, and 3 of Charge V. *United States v. Rose*, ACM 36508 (rem) (A.F. Ct. Crim. App. 9 March 2011) (unpub. op.). Although dismissal of the affected specifications and reassessment of the sentence appeared to be in the best interest of both justice and judicial economy, it also appears, in light of reconsideration based on the briefs of the parties to exceed the scope of the second remand by taking additional action regarding Specifications 1, 2, and 3 of Charge V.

Accordingly, it is by the Court on this 15th day of August, 2011,

ORDERED:

Wherefore, consistent with our initial decision in this matter and within the parameters of the remand orders, the findings of guilty as to Specifications 1, 2, and 3 of Charge V having already been set aside, we affirm the remaining findings of guilty, set aside the sentence, and authorize a rehearing on Specifications 1, 2, and 3 of Charge V and the sentence.

Judges BRAND, ORR, GREGORY, and WEISS concur.

Judge ROAN did not participate.

FOR THE COURT

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a light blue horizontal line.

STEVEN LUCAS
Clerk of the Court