

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

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**UNITED STATES**

**v.**

**Staff Sergeant FRANK SANCHEZ JR.  
United States Air Force**

**ACM 34940 (f rev)**

**6 December 2004**

Sentence adjudged 19 October 2001 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 24 months, and reduction to E-1.

Appellate Counsel for Appellant: Captain L. Martin Powell (argued), Colonel Beverly B. Knott, Major Terry L. McElyea, Major Jefferson B. Brown, and Major Patricia A. McHugh.

Appellate Counsel for the United States: Lieutenant Colonel Lance B. Sigmon (argued), Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Kevin P. Stiens.

Before

STONE, ORR, and SMITH  
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case is before our Court for the second time. In *United States v. Sanchez*, 59 M.J. 566 (A.F. Ct. Crim. App. 2003), we affirmed the findings and sentence. On appeal, our superior court set aside the finding of guilty as to the Additional Charge and its Specification and the sentence. The case is remanded to us with instructions to “either dismiss the Additional Charge and its specification and reassess the sentence based on the affirmed guilty findings or order a rehearing.” *United States v. Sanchez*, No. 04-0157/AF (9 Sep 2004). Under the facts and circumstances of this case, we conclude the

appropriate remedy is to dismiss the Additional Charge and its Specification. We further conclude we can reassess the sentence in accordance with the established criteria.

In *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002), our superior court summarized the required analysis for reassessing a sentence as follows:

In *United States v. Sales*, 22 MJ 305 (CMA 1986), this Court set out the rules for sentence reassessment by a Court of Criminal Appeals. If the court can determine that, absent the error, the sentence would have been at least of a certain magnitude, then it may cure the error by reassessing the sentence instead of ordering a sentence rehearing. *Id.* at 307. A sentence of that magnitude or less “will be free of the prejudicial effects of error.” *Id.* at 308. If the error at trial was of constitutional magnitude, then the court must be satisfied beyond a reasonable doubt that its reassessment cured the error. *Id.* at 307. If the court “cannot reliably determine what sentence would have been imposed at the trial level if the error had not occurred,” then a sentence rehearing is required. *Id.*

Applying this analysis, and after careful consideration of the entire record, we are satisfied beyond a reasonable doubt that, without the Additional Charge and its Specification, the military judge would have adjudged a sentence of no less than a dishonorable discharge, confinement for 15 months, and reduction to E-1. In addition, we find this reassessed sentence appropriate for the offenses involved. Article 66(c), UCMJ, 10 U.S.C. § 866(c).

The Additional Charge and its Specification are dismissed. The findings, as amended, and the sentence, as reassessed, are correct in law and fact and no error prejudicial to the appellant’s substantial rights occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings, as amended, and the sentence, as reassessed, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court