

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

No. ACM S32467

UNITED STATES

Appellee

v.

Randall A. STEPHENS

Airman First Class (E-3), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 1 December 2017

Military Judge: Andrew Kalavanos.

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1. Sentence adjudged 24 March 2017 by SpCM convened at Goodfellow Air Force Base, Texas.

For Appellant: None.*

* On 24 March 2017, shortly after the announcement of sentence, Appellant executed an Air Force Form 304 (AF Form 304), *Request for Appellate Defense Counsel*, indicating that he did not request appellate defense counsel to represent him before this court. This form not only provides a means by which an appellant may request or decline appellate counsel but also includes a declaration that the signatory understands he or she is entitled to request appellate defense counsel, and that he or she is also entitled to retain civilian counsel at no expense to the Government. In *United States v. Xu*, 70 M.J. 140 (C.A.A.F. 2011) (mem. dec.), the United States Court of Appeals for the Armed Forces concluded that an appellant's waiver of appellate counsel prior to the convening authority's action was premature. On 8 May 2017, six days after the convening authority took action in this case, Appellant executed a second AF Form 304 and again indicated that he did not request appellate defense counsel. Appellant's case was docketed with this court on 10 May 2017. As of 21 November 2017, the court had not received a notice of appearance from any counsel or any pleading filed on behalf of or by Appellant or by the Government. The court also had not received a waiver or withdrawal of appellate review, e.g., Department of Defense Form 2330 or its functional equivalent. See, e.g., *Manual for Courts-Martial, United States* (2016 ed.), App. 19, at A19-1.

Before HARDING, SPERANZA, and HUYGEN, *Appellate Military Judges*.

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 18.4.

PER CURIAM:

The approved findings and sentence are correct in law and fact, and no error materially prejudicial to Appellant's substantial rights occurred. Articles 59(a) and 66(c), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the approved findings and sentence are **AFFIRMED**.



FOR THE COURT

Kathleen M. Potter

KATHLEEN M. POTTER
Acting Clerk of the Court