

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

Misc. Dkt. No. 2017-02

David R. ALLEN

Master Sergeant (E-7), U.S. Air Force, *Petitioner*

v.

UNITED STATES

Respondent

Petition for New Trial Pursuant to Article 73, UCMJ

Decided 11 August 2017

Military Judge: Donald R. Eller, Jr.

Approved sentence: Bad-conduct discharge, confinement for 1 year, reduction to E-3, and a reprimand. Sentence adjudged 17 October 2015 by GCM convened at Ramstein Air Base, Germany.

For Petitioner: Major Annie W. Morgan, USAF; Brian L. Mizer, Esquire.

For Respondent: Lieutenant Colonel Lance R. Smith, USAF; Major Collin F. Delaney, USAF; Major Mary Ellen Payne, USAF; Captain Matthew L. Tusing, USAF; Gerald R. Bruce, Esquire.

Before DREW, HARDING, and MINK, *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**This is an unpublished opinion and, as such, does not serve as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:

A general court-martial composed of officer members convicted Petitioner, contrary to his pleas, of two specifications of dereliction of duty by willfully failing to refrain from pursuing an unprofessional sexual relationship with two junior Airmen, including Airman First Class (A1C) (E-3) CG, in violation of Article 92(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892(3);

two specifications of dereliction of duty by willfully failing to refrain from pursuing an unprofessional dating relationship with two other junior Airmen, also in violation of Article 92(3); and one specification of sexual assault of A1C CG, in violation of Article 120, UCMJ, 10 U.S.C. § 920.* The court-martial sentenced Petitioner to a bad-conduct discharge, confinement for one year, reduction to E-3, and a reprimand. The convening authority approved the adjudged sentence.

While his appeal under Article 66, UCMJ, 10 U.S.C. § 866, was pending before this court, Petitioner submitted a petition for a new trial to The Judge Advocate General of the Air Force. Pursuant to Rule for Courts-Martial 1210(e), the petition was forwarded for our review. Petitioner asserts fraud on the court and newly discovered evidence with regard to his conviction of sexual assault. In light of our decision in *United States v. Allen*, No. ACM 39001, slip op. (A.F. Ct. Crim. App. 11 Aug. 2017) (unpub. op.), finding the conviction of sexual assault factually insufficient, we **DENY** the petition as moot.



FOR THE COURT

A handwritten signature in black ink, appearing to read "Kurt J. Brubaker".

KURT J. BRUBAKER
Clerk of the Court

*After arraignment but before the members were sworn, the convening authority withdrew and dismissed a specification of rape, in violation of the version of Article 120, UCMJ, applicable on or before 30 September 2007. At the close of findings, the military judge granted a motion for a finding of not guilty, in accordance with Rule for Courts-Martial 917, as to a specification of abusive sexual contact of A1C CG, in violation of Article 120, but permitted the Prosecution to proceed with the lesser included offense of attempted abusive sexual contact, in violation of Article 80, UCMJ, 10 U.S.C. § 880. The court-martial acquitted Petitioner of attempted abusive sexual contact and of an additional specification of dereliction of duty by willfully failing to refrain from pursuing an unprofessional dating relationship with yet another junior Airman.