

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

No. ACM S32585 (f rev)

UNITED STATES
Appellee

v.

Joshua R. BROUSSARD
Senior Airman (E-4), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary
Upon Further Review
Decided 29 July 2020

Military Judge: Jennifer E. Powell.

Approved sentence: Bad-conduct discharge, confinement for 150 days, reduction to E-1, and a reprimand. Sentence adjudged 12 March 2019 by SpCM convened at Nellis Air Force Base, Nevada.

For Appellant: None.*

* On 12 March 2019, the same date as the announcement of sentence, Appellant executed an Air Force Form 304, *Request for Appellate Defense Counsel* (May 2000) (AF Form 304), electing to not request appellate defense counsel to represent him before this court. The AF Form 304 not only provides a means by which an appellant may request or decline appellate counsel, but also includes a declaration that the signatory understands that 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.), the United States Court of Appeals for the Armed Forces concluded that an appellant's waiver of counsel prior to the convening authority's action was premature; therefore, an appellant is required to be provided another opportunity to elect if he or she requests appellate defense counsel after the convening authority takes action. This did not occur in Appellant's case. On 24 March 2020, this court remanded Appellant's case to The Judge Advocate General for a determination as to whether Appellant desired appellate defense counsel repre-

Before MINK, LEWIS, and D. JOHNSON, *Appellate Military Judges*.

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.

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). *Manual for Courts-Martial, United States* (2016 ed.). Accordingly, the approved findings and sentence are **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

sentation and ordered the record of trial returned to this court for completion of appellate review. On 27 March 2020, Appellant signed a second AF Form 304 indicating he did not want appellate defense counsel representation.