

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

No. ACM S32509 (f rev)

UNITED STATES

Appellee

v.

Andrew S. CALLOWAY

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

Appeal from the United States Air Force Trial Judiciary

Upon Further Review

Decided 3 August 2022

Military Judge: John C. Degnan.

Approved sentence: No punishment. Sentence adjudged 6 September 2017 by SpCM convened at Holloman Air Force Base, New Mexico.

For Appellant: Major Benjamin H. DeYoung, USAF; Major Eshawn R. Rawlley, USAF.

For Appellee: Lieutenant Colonel Matthew J. Neil, USAF; Major Brian E. Flanagan, USAF; Major John P. Patera, USAF; Mary Ellen Payne, Esquire.

Before JOHNSON, KEY, and MEGINLEY, *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This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.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:

A special court-martial composed of a military judge alone convicted Appellant, in accordance with his pleas, of one specification of wrongful use of cocaine on divers occasions and one specification of wrongful use of 3,4-methylenediox-

ymethamphetamine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a.* The military judge sentenced Appellant to a bad-conduct discharge, confinement for 30 days, hard labor without confinement for 30 days, reduction to the grade of E-2, and a reprimand. The convening authority approved the sentence with the exception of hard labor without confinement.

Upon this court's initial review, we excepted, set aside, and dismissed with prejudice certain language from Specification 1 of the Charge; substituted other language therefor; set aside the sentence; and authorized a rehearing on the sentence. *United States v. Calloway*, No. ACM S32509, 2019 CCA LEXIS 400, at *44 (A.F. Ct. Crim. App. 11 Oct. 2019) (unpub. op.).

On remand, the convening authority issued an order dated 4 May 2020 which acknowledged this court's decree, and stated that a rehearing on the sentence was "found to be impracticable." The order then announced that the "findings of guilty as promulgated" in the *original* promulgating order were "approved," and that the convening authority "impose[d] a sentence of no punishment." The record was re-docketed with this court, and on 22 February 2021, Appellant through counsel submitted this case for review on its merits without additional assignments of error. On 1 June 2021, this court issued an order to the Government to show good cause as to why the record should not be returned to the convening authority for correction of the action. After receiving the Government's response, on 10 August 2021, this court returned the record to The Judge Advocate General for remand to the convening authority because the convening authority's 4 May 2020 action purporting to approve the original findings was "not only erroneous and *ultra vires*, but confusing and misleading." *United States v. Calloway*, No. ACM S32509 (f rev), 2021 CCA LEXIS 407, at *5 (A.F. Ct. Crim. App. 10 Aug. 2021) (order).

Following the additional remand, on 13 September 2021, the convening authority issued an order which again stated a rehearing on the sentence was found to be impracticable. The convening authority therefore "approve[d] a sentence of no punishment." *See* Rule for Courts-Martial 1107(e)(2)(C)(iii).

The record has again been re-docketed with this court, and after receiving eight enlargements of time, on 25 July 2022, Appellant has again submitted the case for review without additional assignments of error.

The approved findings, as modified by this court's prior opinion, and the approved sentence of no punishment are correct in law and fact, and no error materially prejudicial to Appellant's substantial rights occurred. Articles 59(a)

* All references in this opinion to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2016 ed.).

and 66(c), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a), 866(c). Accordingly, the approved findings, as modified, and sentence are **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court