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

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**No. ACM S32659 (f rev)**

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**UNITED STATES**

*Appellee*

**v.**

**Brett D. KUBIAK**

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

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Appeal from the United States Air Force Trial Judiciary

*Upon Further Review*

Decided 8 February 2021

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*Military Judge:* Jefferson B. Brown.

*Sentence:* Sentence adjudged 3 July 2020 by SpCM convened at Schriever Air Force Base, Colorado. Sentence entered by military judge on 18 July 2020 and reentered on 23 November 2020: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

*For Appellant:* Lieutenant Colonel Lance J. Wood, USAF.

Before POSCH, RICHARDSON, and MEGINLEY, *Appellate Military Judges.*

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**This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.**

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PER CURIAM:

A special court-martial found Appellant guilty, in accordance with his pleas, of one specification of wrongful use of cocaine and three specifications of wrongful use of methamphetamine, both in violation of Article 112a, Uniform

Code of Military Justice (UCMJ), 10 U.S.C. § 912a, and three specifications of incapacitation for duty, in violation of Article 112, UCMJ, 10 U.S.C. § 912.<sup>1</sup> A panel consisting of officer and enlisted members sentenced Appellant to a bad-conduct discharge, confinement for six months, and reduction to the grade of E-1. On 16 July 2020, the convening authority took no action on the findings or sentence, but waived automatic forfeitures at Appellant’s request for the benefit of his dependent child.<sup>2</sup> The military judge signed the entry of judgment (EoJ) on 18 July 2020.

This case was submitted for our review on its merits without assignment of error. However, in our review under Article 66, UCMJ, 10 U.S.C. § 866, we identified errors in the EoJ. By order of this court on 9 November 2020, we remanded Appellant’s record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the EoJ. *United States v. Kubiak*, No. ACM S32659, 2020 CCA LEXIS 408 (A.F. Ct. Crim. App. 9 Nov. 2020) (order); *see also* Article 66(g), UCMJ, 10 U.S.C. § 866(g); Rule for Courts-Martial 1111(c)(3). On 23 November 2020, the military judge corrected the EoJ and the record of trial was returned to this court the same day. We have reviewed the corrections made to the EoJ and those corrections comply with this court’s order. Appellant did not submit any additional filings with this court.

Upon further review, the findings and sentence entered are correct in law and fact, and no error materially prejudicial to Appellant’s substantial rights occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the findings and sentence are **AFFIRMED**.



FOR THE COURT

*Carol K. Joyce*

CAROL K. JOYCE  
Clerk of the Court

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<sup>1</sup> References in this decision to the Uniform Code of Military Justice (UCMJ) and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

<sup>2</sup> Appellant was found guilty of charges and specifications that alleged the commission of offenses on or after 1 January 2019. Articles 60a and 60b, UCMJ, 10 U.S.C. §§ 860a, 860b, and Rules for Courts-Martial 1109 and 1110 (2019 *MCM*), applied to the convening authority’s decision on action. *See* Exec. Order 13,825, §§ 3 and 5, 83 Fed. Reg. at 9890 (8 Mar. 2018).