

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

No. ACM 40103 (f rev)

UNITED STATES

Appellee

v.

Michael E. NOVELLI

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

Appeal from the United States Air Force Trial Judiciary

Upon Further Review

Decided 23 February 2023

Military Judge: Willie J. Babor (arraignment and motions); Charles E. Wiedie, Jr. (trial); Dayle P. Percle (remand).

Sentence: Sentence adjudged on 26 January 2021 by GCM convened at Spangdahlem Air Base, Germany. Sentence entered by military judge on 1 March 2021, and reentered on 5 August 2022: Bad-conduct discharge, confinement for 600 days, forfeiture of all pay and allowances, and reduction to E-1.

For Appellant: Major Kasey W. Hawkins, USAF.

For Appellee: Lieutenant Colonel Matthew J. Neil, USAF; Lieutenant Colonel Amanda L.K. Linares, USAF; Major Deepa M. Patel, USAF; Major John P. Patera, USAF; Mary Ellen Payne, Esquire.

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This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.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

Appellant’s case is before us a second time. In an earlier opinion, this court addressed four assignments of error: whether (1) the entry of judgment should be corrected; (2) the conspiracy specifications are an unreasonable multiplication of charges; (3) trial counsel’s sentencing argument was improper; and (4) Appellant’s sentence is inappropriately severe.* *See generally United States v. Novelli*, No. ACM 40103, 2022 CCA LEXIS 403 (A.F. Ct. Crim. App. 12 Jul. 2022) (per curiam) (unpub. op.). We carefully considered issues (2), (3), and (4) and determined no discussion or relief was warranted. *Id.* at *3. We found merit to issue (1): the entry of judgment lacked specificity as to some offenses of which Appellant was convicted. *Id.* at *6–7. To cure this error, we remanded the case to the Chief Trial Judge, Air Force Trial Judiciary, for modification of the entry of judgment as noted in our opinion. *Id.* at *9–10. On 5 August 2022, a detailed military judge issued a corrected copy of the entry of judgment. Appellant’s case was then returned to this court.

In his brief to this court upon further review, Appellant acknowledges the entry of judgment was corrected, and “specifically preserves and maintains” issues (2)–(4). Appellant asks this court to consider additional argument regarding issue (2), and makes no further argument on issues (1), (3), or (4).

Appellant urges this court to pierce any waiver of his claim on appeal that the two specifications of conspiracy to which he pleaded guilty were an unreasonable multiplication of charges. We have carefully considered Appellant’s additional arguments on issue (2), and maintain our original decision that no relief is warranted.

The findings and sentence as entered on 5 August 2022 are correct in law and fact, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the findings and the sentence are **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

* Issues (3) and (4) were raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).