

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

UNITED STATES	)	No. ACM S32706
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Aziz A. WALKER)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

I. BACKGROUND

On 12 May 2021, at Goodfellow Air Force Base, Texas, a special court-martial convicted Appellant, in accordance with his pleas and pursuant to a plea agreement, of one specification of wrongful use of lysergic acid diethylamide (LSD) on divers occasions; one specification of wrongful use of marijuana on divers occasions; one specification of wrongful possession of marijuana; one specification of wrongful introduction of marijuana onto a military installation with intent to distribute on divers occasions; one specification of wrongful introduction of LSD onto a military installation with intent to distribute; one specification of wrongful distribution of marijuana on divers occasions; and one specification of wrongful distribution of LSD—all in violation of Article 112a, Uniform Code of Military Justice (UCMJ),¹ 10 U.S.C. § 912a. Appellant was sentenced to a bad-conduct discharge, confinement for 150 days, and reduction to the grade of E-1.

The same day as trial, Appellant signed an Air Force (AF) Form 304, *Request for Appellate Defense Counsel*, and checked the box, “I do not request Appellate Defense Counsel to represent me.” The same day as trial, Appellant also submitted matters in clemency. The convening authority took no action on the findings or sentence of the case and signed the decision memorandum on 14 May 2021. The military judge also signed the entry of judgment on 14 May 2021. The case was docketed with this court on 7 September 2021, without an appellate defense counsel assigned to Appellant’s case.

¹ References to the Uniform Code of Military Justice in this order are to the *Manual for Courts-Martial, United States* (2019 ed.).

II. MISSING SECOND AF FORM 304

Article 70(c)(1), UCMJ, 10 U.S.C. § 870(c)(1), states that an appellate defense counsel shall represent an accused before this court “when requested by the accused.” However, here, Appellant signed an AF Form 304 electing not to have appellate defense counsel representation.

Reviewing the case pursuant to Article 66, UCMJ, 10 U.S.C. § 866, the court notes the original record of trial is missing a second AF Form 304, completed after the convening authority acted on the case. Such a form should have been completed pursuant to *United States v. Smith*, 34 M.J. 247, 249 (C.M.A. 1992); *United States v. Xu*, 70 M.J. 140 (C.A.A.F. 2011) (mem.); and in accordance with the guidance in Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, ¶ 14.5 (18 Jan. 2019).

In *Smith*, the U.S. Court of Military Appeals (now U.S. Court of Appeals for the Armed Forces (CAAF)) set aside the affirmance of the conviction, finding that the purported waiver of appellate representation was tantamount to a waiver of appellate review because the appellant had not had sufficient time to reflect when he signed the waiver. 34 M.J. at 249. The court held “these two actions [waiver of appellate representation and waiver of appellate review] are too inextricably intertwined to be treated differently” and therefore concluded “the purported waiver of representation by appellate counsel was premature and without effect.” *Id.* at 249. In *Xu*, the CAAF concluded that the appellant’s waiver of appellate counsel prior to the convening authority’s action was premature. 70 M.J. at 140. Thus, a second form is required. If the second AF Form 304 “is not part of the ROT, the record will be returned to the servicing [staff judge advocate (SJA)] for execution of this requirement.” AFI 51-201, ¶ 14.5.2.2.

Accordingly, it is by the court on this 18th day of November, 2021,

ORDERED:

That the United States shall, not later than **1 December 2021**, **SHOW GOOD CAUSE** why this case should not be returned to The Judge Advocate General to determine whether Appellant properly waived his right to appellate defense counsel.



FOR THE COURT



ANTHONY F. ROCK, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee</i>	)	UNITED STATES’ ANSWER TO
	)	SHOW CAUSE ORDER
)	
v.	)	Panel No. 1
)	
	)	ACM S32706
Airman (E-2))	
AZIZ A. WALKER, USAF	)	29 November 2021
<i>Appellant</i>)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

Appellant was tried at Goodfellow AFB on 12 May 2021. Upon the Record of Trial being docketed with this Honorable Court on 7 September 2021, this Court noted that it was missing documentation regarding Appellant’s decision on whether to waive his right to appellate defense counsel.

This Court observed that Appellant’s initial AF Form 304, which was signed on 12 May 2021 before the convening authority’s decision on action, was included in the ROT. But this Court noted the original record of trial was missing a second AF Form 304, completed after the convening authority made a decision on action in this case. This Court determined that such a form was required by United States v. Smith, 34 M.J. 247, 249 (C.M.A. 1992); United States v. Xu, 70 M.J. 140 (C.A.A.F. 2011) (mem.); and Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, ¶ 14.5 (18 Jan. 2019). On 18 November 2021, this Court ordered the Government to inform the Court in writing whether Appellant has waived his right to appellate defense counsel.

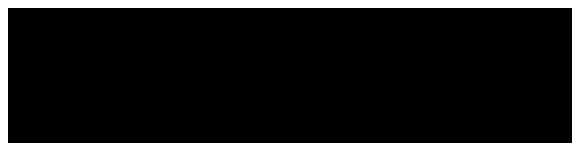
In response to this Court’s order, the Government has filed a motion to attach evidence of that written waiver to the record. Specifically, the Government has attached Appellant’s second

AF Form 304 dated 5 August 2021, which was signed after the convening authority's decision on action on 14 May 2021 and the entry of judgment, along with an accompanying declaration from the case paralegal, which certifies the accuracy of that form. (Motion to Attach, dated 29 November 2021.)

This should assure this Court that Appellant has waived his right to appellate defense counsel. And now that this second form is now available and attached to the record for this Court to review, this Court may proceed with appellate review.



CORTLAND T. BOBCZYNSKI, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court on 29 November 2021.



CORTLAND T. BOBCZYNSKI, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' MOTION
<i>Appellee,</i>	)	TO ATTACH
)	
v.)	
	)	ACM S32706
Airmen (E-2))	
AZIZ A. WALKER, USAF	)	Panel No. 1
<i>Appellant.</i>)	
	)	29 November 2021

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(b) of this Court's Rules of Practice and Procedure, the United States hereby moves for leave to attach the following documents to this motion:

- Declaration of SrA M.S. (with one attachment – AF Form 304, dated 5 August 2021)

On 18 November 2021, this Court issued an order to the government to show cause why the case should not be remanded to address a missing AF Form 304, and to assess whether Appellant had waived his right to appellate defense counsel. The attached declaration includes as an attachment the missing AF Form 304 from the original record of trial, and attests to the authenticity of that form. The declaration is directly responsive to this Court's order to show cause and is relevant and necessary to this Court's review of the case.

WHEREFORE, the United States respectfully requests this Honorable Court grant this Motion to Attach.



CORTLAND T. BOBCZYNSKI, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force





MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court on 29 November 2021.



CORTLAND T. BOBCZYNSKI, Capt, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force





**DEPARTMENT OF THE AIR FORCE
U.S. AIR FORCE COURT OF CRIMINAL APPEALS
1500 WEST PERIMETER ROAD, SUITE 1900
JOINT BASE ANDREWS MD 20762-6604**

2 December 2021

MEMORANDUM FOR Airman Aziz A. Walker, USAF
[REDACTED]

FROM: United States Air Force Court of Criminal Appeals

SUBJECT: Notice of Docketing, No. ACM S32706

Dear Amn Walker,

On 7 September 2021, your case, No. ACM S32706, was docketed with this court for review under its authority pursuant to Article 66, Uniformed Code of Military Justice (UCMJ), 10 U.S.C. § 866. As indicated in the record of trial, on Air Force (AF) Form 304, dated 12 May 2021, you elected not to have an appellate defense counsel represent you. Therefore, this notice is to inform you that your case is now before this court for appellate review.

Per this court's Rules of Practice and Procedure, Rule 18(d), you have 60 days from the date of this letter to file a brief to identify any assignments of error with your case, if any. The Government will then have 30 days to file an answer in response to any assignments of error filed by you. You will then have seven days to file a reply to the Government's answer.

Please submit any assignments of error to af.jah.filing.workflow@us.af.mil or mail to 1500 West Perimeter Rd, Suite 1900, Joint Base Andrews, MD 20762. Should you have any questions regarding this process, please contact Appellate Defense Division at af.jaja.afloa.filing.workflow@us.af.mil.

Respectfully,

[REDACTED]

CAROL K. JOYCE
Clerk of the Court