

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

UNITED STATES	)	No. ACM 39761 (rem)
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Jamal X. WASHINGTON	)	
First Lieutenant (O-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

This case is before our court for the fourth time. The facts of the case, the trial and appellate procedural history, and the findings at trial, on appeal, and at rehearing have been extensively chronicled in *United States v. Washington*, No. ACM 39761, 2021 CCA LEXIS 379 (A.F. Ct. Crim. App. 30 Jun. 2021) (unpub. op.); *United States v. Washington*, No. ACM 39761 (reh), 2024 CCA LEXIS 342 (A.F. Ct. Crim. App. 20 Aug. 2024) (unpub. op.); and *United States v. Washington*, __ M.J. __, No. 25-0044, 2026 CAAF LEXIS 353 (C.A.A.F. 13 Apr. 2026).

On 13 April 2019, a general court-martial, convened at Malmstrom Air Force Base, Montana, composed of officer members, convicted Appellant, contrary to his pleas, of one specification of abusive sexual contact (Charge I), one specification of conduct unbecoming an officer (Charge II), and five specifications of fraternization (Charge III), in violation of Articles 120, 133, and 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 920, 933, 934, respectively.¹ The adjudged and approved sentence consisted of a dismissal. *See Washington*, 2021 CCA LEXIS 379, at *1–2.

In this court’s first review of Appellant’s case under Article 66, UCMJ, 10 U.S.C. § 866, a divided three-judge panel dismissed all five Article 134, UCMJ, specifications for fraternization (Charge III)—four with prejudice—set aside the sentence, and authorized a rehearing for one specification of fraternization (Specification 5 of Charge III) and the sentence. *Id.* at *111. The court found that the findings of guilty to Charges I and II—the abusive sexual contact and

¹ References to the punitive articles in this order are to the *Manual for Courts-Martial, United States* (2016 ed.). All other references to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

conduct unbecoming an officer offenses, respectively—were correct in law and fact, and affirmed. *Id.* Appellant petitioned the United States Court of Appeals for the Armed Forces (CAAF) for a grant of review, which the CAAF “denied without prejudice to Appellant’s right to raise matters asserted during the normal course of appellate review.” *United States v. Washington*, 82 M.J. 30 (C.A.A.F. 2021) (mem.).

The convening authority subsequently determined that a rehearing as to Specification 5 of Charge III and Charge III was impracticable and dismissed the specification and charge. *Washington*, 2024 CCA LEXIS 342, at *3. However, the convening authority ordered a rehearing on the sentence for Charges I and II and their specifications, resulting in a panel of officer members sentencing Appellant to nine months confinement, forfeiture of all pay and allowances, and a reprimand. *Id.*

On further review of this appeal, Appellant raised nine assignments of error for this court’s consideration. Having found that Appellant was prejudiced by ineffective assistance of counsel, the court reassessed the sentence to “cure” the error. *Id.* at *84. Accordingly, the court affirmed only so much of the sentence extending to \$2,500.00 pay per month for six months, while setting aside the nine months of confinement and the reprimand. As noted *supra*, the findings of guilty as to Charges I and II and their specifications remained affirmed. *Id.* at *85.

Upon granting review under Article 67, UCMJ, 10 U.S.C. § 867, the CAAF examined whether the military judge abused his discretion by striking portions of Appellant’s testimony concerning the specification of Charge I as impermissible evidence of “other sexual behavior” and “sexual predisposition” under Mil. R. Evid. 412(a)(1) and 412(a)(2). *United States v. Washington*, 85 M.J. 408, 409 (C.A.A.F. 2025).

In a 4–1 decision, the CAAF held that the military judge abused his discretion because the stricken “testimony described surrounding circumstances that were inextricably intertwined with the charged offense and a conversation that did not implicate the victim’s sexual predisposition,” and therefore “constituted an extraordinary remedy [by the military judge] outside the range of reasonable choices supported by the facts and law.” *Washington*, 2026 CAAF LEXIS 353, at *2–3. Accordingly, the CAAF set aside the findings of guilty as to Charge I and its specification and the sentence, and affirmed the findings of guilty to Charge II and its specification. *Id.* at *25. The CAAF returned the record of trial to The Judge Advocate General of the Air Force for remand to this court, further instructing that we “may either dismiss Charge I and its specification and reassess the sentence, or order a rehearing. Thereafter, Article 67, UCMJ, 10 U.S.C. § 867 (2024), will apply.” *Id.* at 24–25.

On 25 June 2026, this court afforded the parties the opportunity “to submit briefs to address whether this court should (1) dismiss Charge I and its Specification and reassess the sentence or (2) order a rehearing in light of our superior court’s decision in *United States v. Washington*, [2026 CAAF LEXIS 353, at *2–3].” On 16 July 2026, Appellant submitted a brief contending that Charge I and its specification should be dismissed by this court as factually insufficient and to order a rehearing as to the sentence for Charge II and its specification.² On 24 July 2026, the Government recommended this court remand the case to an appropriate convening authority to order a rehearing on the findings and sentence. After careful consideration, we find it appropriate to remand this case to the convening authority for action in accordance with the decretal paragraph below.

Accordingly, it is by the court on this 31st day of August, 2026,

ORDERED:

Appellant’s case is **RETURNED** to The Judge Advocate General for remand to an appropriate convening authority who may order a rehearing as to Charge I and its specification, and the sentence. Article 66(f), UCMJ, 10 U.S.C. § 866(f). If the convening authority finds a rehearing on Charge I and its specification is impracticable, the convening authority may dismiss Charge I and its specification. *Id.* If the convening authority finds a rehearing on sentence is impracticable, the convening authority may approve a sentence of no punishment. *See* Rule for Courts-Martial 1203.

Thereafter, the record of trial will be returned to this court for completion of its appellate review under Article 66, UCMJ.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

² Appellant also argued, in the alternative, that this court should grant relief for unreasonable post-trial delay at this stage of the proceeding. We decline to conduct such a review until the record of trial is returned to this court for completion of its appellate review under Article 66, UCMJ, consistent with this order.