

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

UNITED STATES)	No. ACM 39856 (f rev)
<i>Appellee</i>)	
)	
v.)	
)	ORDER
Michael J. WERMUTH)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>)	Special Panel

This case is before the court for a second time. In an earlier opinion, we determined the convening authority had failed to take action on the sentence as required by Executive Order 13,825, § 6(b), 83 Fed. Reg. 9889, 9890 (8 Mar. 2018), and Article 60, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 860 (*Manual for Courts-Martial, United States* (2016 ed.)),* and we remanded Appellant’s case to the Chief Trial Judge, Air Force Trial Judiciary, for corrective action. See *United States v. Wermuth*, No. ACM 39856, 2021 CCA LEXIS 378, at *7–8 (A.F. Ct. Crim. App. 30 Jul. 2021). The case was re-docketed with the court on 17 September 2021.

The re-docketed record of trial contains a corrected entry of judgement (EoJ), dated 7 September 2021. The corrected EoJ contains a list of attachments, including “Corrected Convening Authority Decision on Action, dated 31 August 2021.” However, the re-docketed record of trial contains no such attachment. Instead, where this document should appear, there is an 8 September 2021 corrected “Convening Authority Decision on Action” for a different appellant’s case.

In accordance with Rule for Courts-Martial (R.C.M.) 1112(b)(8), the record of trial shall contain “[a]ny action by the convening authority” A superior competent authority may return the record of trial to the military judge for correction, R.C.M. 1112(d)(2), and this court may order additional proceedings in a case when warranted, see Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3).

Accordingly it is by the court on this 1st day of April, 2022,

ORDERED:

* Unless otherwise noted, all references in this order to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

Pursuant to R.C.M. 1112(d)(2) and Article 66(f)(3), UCMJ, the record of trial in this case is returned to the Chief Trial Judge, Air Force Trial Judiciary, to resolve a substantial issue with the completeness of the record of trial, due to the incorrect convening authority's decision on action memorandum being placed in Appellant's record of trial.

The record of trial will be returned to the court not later than **22 April 2022**, for completion of appellate review under Article 66, UCMJ, 10 U.S.C. § 866.

If the ROT cannot be returned to the court by 22 April 2022, the Government will inform the court in writing no later than 22 April 2022 of the status of compliance with this order.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court