

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

UNITED STATES)	No. ACM 38519 (rem)
<i>Appellee</i>)	
)	
v.)	
)	ORDER
Jaime R. RODRIGUEZ)	
Technical Sergeant (E-6))	
U.S. Air Force)	
<i>Appellant</i>)	Special Panel

Appellant’s case has a long and complicated history. In June 2013, Appellant pleaded guilty to 16 specifications of violating a lawful general regulation; one specification of violating a lawful order; one specification of making a false official statement; one specification of consensual sodomy; two specifications of obstructing justice; and two specifications of adultery in violation of Articles 92, 107, 125 and 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 892, 907, 925, 934. Additionally, the court-martial composed of officer members convicted Appellant, contrary to his pleas, of one specification of aggravated sexual assault by causing bodily harm; one specification of abusive sexual contact by causing bodily harm; one specification of consensual sodomy; one specification of aggravated sexual contact by using strength; one specification of wrongful sexual contact; and one specification of indecent exposure in violation of Articles 120 and 125, UCMJ, 10 U.S.C. §§ 920, 925.¹ The court-martial sentenced Appellant to a dishonorable discharge, confinement for 27 years, forfeiture of all pay and allowances, and reduction to E-1. The convening authority disapproved the adjudged forfeitures, but otherwise approved the findings and the adjudged sentence.

In our original opinion, *United States v. Rodriguez (Rodriguez I)*, No. ACM 38519, 2015 CCA LEXIS 143 (A.F. Ct. Crim. App. 14 Apr. 2015) (unpub. op.), we remanded the record to the convening authority for new post-trial processing and action. The convening authority again disapproved the adjudged forfeitures, but otherwise approved the findings and the adjudged sentence.

On further review at this court, *United States v. Rodriguez (Rodriguez II)*, No. ACM 38519 (f rev), 2016 CCA LEXIS 416 (A.F. Ct. Crim. App. 13 Jul. 2016)

¹ The specifications for which Appellant was convicted applied the versions of the applicable punitive articles found in the *Manual for Courts-Martial, United States* (2008 ed.).

(unpub. op.), we set aside and dismissed the findings of guilty for five of the six litigated offenses, affirmed the remaining findings, authorized a rehearing on sentence on the affirmed charges and specifications, and returned the record to The Judge Advocate General (TJAG) for remand to the convening authority.

The convening authority ordered a rehearing, which was held on 15 December 2016 and 27–29 March 2017. The court-martial composed of officer members sentenced Appellant to a dishonorable discharge, confinement for six years, forfeiture of all pay and allowances, and reduction to E-1. The convening authority then approved the adjudged sentence.

On further review, this court reaffirmed the previously-affirmed findings and the sentence, but granted 21 days of confinement credit for illegal pretrial confinement. *United States v. Rodriguez (Rodriguez III)*, No. ACM 38519 (f rev), 2019 CCA LEXIS 35 (A.F. Ct. Crim. App. 30 Jan. 2019) (unpub. op.).

The United States Court of Appeals for the Armed Forces (CAAF) granted review on the following issue:

WHETHER THE AIR FORCE COURT OF CRIMINAL APPEALS ERRED BY FINDING THE MILITARY JUDGE'S IMPROPER PROPENSITY INSTRUCTION HARMLESS BEYOND A REASONABLE DOUBT.

The CAAF summarily reversed this court's decision as to "Specification 1 of Second Additional Charge I,"² set aside the finding of guilty as to that specification, and affirmed the remaining findings. The CAAF returned the record to The Judge Advocate General for remand to this court, which the CAAF authorized this court to "either dismiss Specification 1 of Second Additional Charge I and reassess the sentence based on the affirmed findings, or . . . order a rehearing on the affected specification and the sentence." *United States v. Rodriguez*, ___ M.J. ___, No. 19-0232, 2019 CAAF LEXIS 833 (C.A.A.F. 7 Nov. 2019).

Accordingly, it is by the court on this 16th day of January, 2020,

ORDERED:

The record of trial is returned to The Judge Advocate General for remand to the convening authority for further action consistent with the CAAF's decision; a rehearing as to the Specification of Second Additional Charge I and the sentence is authorized. Article 66(e), UCMJ, 10 U.S.C. § 866(e). *Manual for Courts-Martial, United States* (2016 ed.). Thereafter, the record of trial will be

² Originally, Second Additional Charge I had three specifications. However, Specifications 2 and 3 were set aside and dismissed on 16 September 2016, and "Specification 1" was redesignated "Specification" on the charge sheet on 25 October 2016.

returned to this court for completion of appellate review under Article 66, UCMJ, of any finding or sentence approved by the convening authority.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court