

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
SMAWLEY, EWING, and PARKER
Appellate Military Judges

UNITED STATES, Appellee
v.
Master Sergeant ANDREW D. STEELE,
United States Army, Appellant

ARMY 20170303

ORDER

WHEREAS:

On appellant's first review, we affirmed the findings, set aside the sentence, and authorized a sentence rehearing. Appellant's sentence rehearing is now before us again for review under Article 66, Uniform Code of Military Justice [UCMJ]. On 12 October 2021, appellant filed a brief on the sentence rehearing with matters submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). Appellant asserts two assignments of error addressing the findings in his *Grostefon* matters, with appellant's first assignment of error challenging the constitutionality of Article 120c, UCMJ. Government appellate counsel elected not to file a brief in response to appellant's assignments of errors asserted in his *Grostefon* matters.

NOW THEREFORE, IT IS ORDERED:

On its own motion, this Court orders appellate government counsel to provide their response to the following specified issues:

I.

WHETHER THIS COURT HAS DISCRETION TO CONSIDER AN ASSIGNMENT OF ERROR CHALLENGING THE FINDINGS WHEN: (1) APPELLANT FAILED TO RAISE IT DURING HIS FIRST APPEAL BEFORE THIS COURT; AND (2) THIS COURT ONLY REMANDED APPELLANT'S CASE FOR A SENTENCE REHEARING.

II.

WHETHER INDECENT EXPOSURE, ARTICLE 120c, UCMJ, IS
UNCONSTITUTIONALLY VAGUE.

Government appellate counsel shall file a brief on the specified issues no later than thirty days from the date of this order. Appellant may file a reply brief no later than fourteen days after appellee's brief.

DATE: 22 November 2021

FOR THE COURT:

TALBERT, JOSEPH P.
PRESTON

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Date: 2021.11.22 11:46:36
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JOSEPH P. TALBERT
Assistant Deputy
Clerk of Court

CF: JALS-DA
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