

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
FLEMING, HAYES, and PARKER
Appellate Military Judges

UNITED STATES, Appellee,
v.
Staff Sergeant SVEN M. COUNCIL
United States Army, Appellant

ARMY 20190321

Headquarters, United States Army Training Center and Fort Jackson
Alyssa S. Adams, Military Judge
Lieutenant Colonel Scott E. Linger, Staff Judge Advocate

For Appellant: Frank J. Spinner, Esquire; Captain Catherine E. Godfrey, JA;
William E. Cassara, Esquire (on brief and reply brief).

For Appellee: Colonel Steven P. Haight, JA; Lieutenant Colonel Wayne H. Williams,
JA; Major Craig J. Schapira, JA; Captain Amanda L. Dixon, JA (on brief).

7 September 2022

SUMMARY DISPOSITION ON REMAND

Per Curiam:

An enlisted panel sitting as a general court-martial convicted appellant, contrary to his pleas, of one specification of willfully disobeying a superior officer, one specification of failing to obey a general order or regulation, one specification of maltreatment, one specification of sexual assault, and one specification of adultery, in violation of Articles 90, 92, 93, 120, and 134, Uniform Code of Military Justice [UCMJ], 10 U.S.C. §§ 890, 892, 893, 920, & 934. The panel sentenced appellant to a dishonorable discharge, confinement for seven years, total forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the sentence as adjudged.

This is the second time appellant's case is before us. After our initial review¹, the Court of Appeals for the Armed Forces (CAAF) set aside our decision and remanded the record of trial back to our Court. The remand directed us to order an inquiry pursuant to Rule for Courts-Martial (R.C.M.) 706 into "[a]ppellant's mental capacity at trial and on appeal and his mental responsibility for his offenses." *United States v. Council*, 82 M.J. 51 (C.A.A.F. 2021).

The R.C.M. 706 inquiry is now complete. The forensic opinion of the clinical psychologist conducting the inquiry stated appellant was both mentally responsible for his misconduct and, when adhering to his treatment regimen, had the mental capacity to understand the nature of the criminal proceedings and cooperate intelligently in his defense. Appellant's defense counsel raised no objections to the R.C.M. 706 findings and represented to this Court that appellant "does not wish to challenge the sanity board conclusions as expressed in both the short and long forms."

The R.C.M. 706 board's findings that appellant was mentally responsible and had the capacity to understand the nature of the criminal proceedings and cooperate intelligently in his defense are responsive to the remanded question. Without conducting a new Article 66, UCMJ review and only within the narrow scope of the limited issue remanded to us by the CAAF, we find the R.C.M. 706 results do not dictate a different result in this case. The findings of guilty and the sentence remain affirmed.

FOR THE COURT:



JAMES W. HERRING, JR.
Clerk of Court

¹ *United States v. Council*, ARMY 20190321, 2021 CCA LEXIS 255 (Army Ct. Crim. App. 21 May 2021) (mem. op.).