

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
PENLAND, MORRIS, and ARGUELLES\*  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Staff Sergeant DAVID C. TATE**  
**United States Army, Appellant**

ARMY 20180477

Headquarters, U.S. Army Intelligence Center of Excellence  
and Fort Huachuca (trial)  
Headquarters, U.S. Army Combined Army Center and Fort Leavenworth (rehearing)  
Michael S. Devine, Military Judge (trial)  
Steven C. Henricks, Military Judge (rehearing)  
Colonel Steven P. Haight, Staff Judge Advocate (trial)  
Colonel Robert L. Manley, III, Staff Judge Advocate (rehearing)

For Appellant: Major Mitchell D. Herniak, JA; Captain Matthew S. Fields, JA.

For Appellee: Pursuant to A.C.C.A. Rule 15.2, no response filed.

14 June 2023

-----  
DECISION ON FURTHER REVIEW  
-----

Per Curiam:

On 25 September 2020, this Court affirmed the findings but set aside the sentence and authorized a rehearing. *United States v. Tate*, ARMY 20180477, 2020 CCA LEXIS 344, at \*11 (Army Ct. Crim. App. 25 September 2020) (mem. op.). The government petitioned for reconsideration, and this Court, sitting *en banc*, reaffirmed the findings and also approved the sentence. *United States v. Tate*, ARMY 20180477, 2021 CCA LEXIS 87, at \*1–2 (Army Ct. Crim. App. 25 February 2021) (mem. op.). On 5 August 2021, the Court of Appeals for the Armed Forces (CAAF) issued an order granting review of whether the transcript of appellant’s trial was substantially verbatim. *United States v. Tate*, 81 M.J. 445 (C.A.A.F. 2021).

---

\* Judge ARGUELLES decided this case while on active duty.

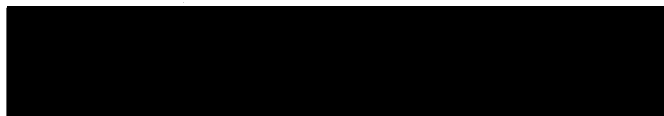
TATE - ARMY 20180477

The CAAF affirmed the findings but reversed this Court by setting aside the sentence, holding the military judge's attempt at curing the recording defect failed to create a substantially verbatim transcript. *United States v. Tate*, 82 M.J. 291, 299 (C.A.A.F. 2022). The CAAF returned the record of trial to the Judge Advocate General of the Army for return to an appropriate convening authority for action consistent with R.C.M. 1103(f) (2016 ed.). *Id.*

On 11 August 2022, the appropriate convening authority ordered a rehearing on the sentence. On 23 September 2022, the military judge sentenced appellant to be reduced to the grade of E-3, to serve 20 months of confinement, and to be discharged from the service with a bad-conduct discharge. On 21 November 2022, the convening authority approved the sentence and credited appellant with 22 months of credit against the sentence to confinement. The action has been completed and the record is now before us for further review.

On consideration of the entire record, we hold the findings of guilty and sentence as approved by the convening authority correct in law and fact. Accordingly, the sentence is AFFIRMED.

FOR THE COURT:



JAMES H. HERRING, JR.  
Clerk of Court