

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
CAMPANELLA, HERRING, and PENLAND
Appellate Military Judges

UNITED STATES, Appellee
v.
Chief Warrant Officer Three CASEY B. ROBERTS
United States Army, Appellant

ARMY 20150023

Headquarters, 25th Infantry Division
Gregory A. Gross, Military Judge
Colonel Mark A. Bridges, Staff Judge Advocate (pretrial)
Colonel William D. Smoot, Staff Judge Advocate (post-trial)

For Appellant: Major Andres Vazquez, Jr., JA; Mr. Brian Pristera, Esquire (on brief); Captain Timothy G. Burroughs, JA; Mr. Brian Pristera, Esquire (on reply brief).

For Appellee: Colonel Mark H. Sydenham, JA; Lieutenant Colonel A.G. Courie III, JA; Major Cormac M. Smith, JA; Captain Cassandra M. Resposo, JA (on brief).

30 June 2017

SUMMARY DISPOSITION

HERRING, Judge:

A panel of officer members, sitting as a general court-martial convicted appellant, contrary to his pleas, of sexual assault and indecent visual recording in violation of Articles 120 and 120c, Uniform Code of Military Justice, 10 U.S.C. §§ 920, 920c (2012) [hereinafter UCMJ] and sentenced appellant to a dismissal, confinement for three years, forfeiture of all pay and allowances, and a reprimand. The convening authority suspended the adjudged forfeitures and waived automatic forfeitures for a period of six months, but otherwise approved the sentence as adjudged.

Appellant raises three assignments of error, all of which, at least in part, are premised on the completeness of the record of trial given that the original trial, which ended in mistrial, was not attached to this record of trial. While this court is able to take judicial notice of the record that ended in mistrial, it appears the

convening authority did not review the record that ended in mistrial prior to taking action in appellant's case. Accordingly, we set aside the action and return the case for a new staff judge advocate recommendation and convening authority action.

CONCLUSION

The convening authority's action, dated 20 October 2015, is set aside. The record of trial is returned to The Judge Advocate General for a new SJAR and new action by the same or a different convening authority in accordance with Article 60(c)-(f), UCMJ with the direction that, before any new SJAR and action, the record of the prior hearing be attached to the record in accordance with R.C.M. 1103(b)(3)(A)(iii).

Senior Judge CAMPANELLA and Judge PENLAND concur.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.
Clerk of Court