

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	ACM S31090 (rem)
Appellee)	
)	
v.)	
)	ORDER
Airman First Class (E-3))	
JAMES L. MACKIE,)	
USAF,)	
Appellant)	Panel No. 1

On 24 September 2007, we returned the appellant’s record of trial to an appropriate convening authority to order a sanity board and directed that the convening authority consider the results of the board to determine whether to order a rehearing or return the record to this Court for further review. The record of trial was returned through AF/JA to the convening authority, and the board was conducted on 17-18 December 2007. 2 BW/JA (the appellant’s former unit of assignment) received the results in January 2008. The record shows no action on the case until AF/JA inquired into the status of the case in March 2010, whereupon 2 BW/JA requested another copy of the board results.

On 8 June 2010, the government submitted various documents in this case to include a “Sanity Board Evaluation;” however, upon review of those documents we expressed concern to counsel for both sides that the document submitted as the sanity board results did not comply with the required format and content. In reply to the appellant’s motion to remand the correct version of the sanity board results to the convening authority, the government concedes that the earlier 5-page report provided to the convening authority was erroneous and agrees to remand the case to the convening authority with the correct version of the report. The government opposes appellant’s request that his counsel be provided an opportunity to submit matters to the convening authority before the convening authority determines whether to order a rehearing or return the record to this Court in compliance with our original decision.

Accordingly it is by the Court on this 24th day of August, 2010,

ORDERED:

That the government’s 28 June 2010 motion to submit documents is **GRANTED**. These documents consist of the correct releasable version of the Sanity Board Report

(hereinafter Report) and an affidavit from 2 BW/JA (Maj Deitch) explaining the origin of the Report and identifying who reviewed previous versions.

The appellant's motion to remand the record to the convening authority for consideration of the correct two-page version of the Report is **GRANTED**.

2 BW/JA will have **7 days** from date of receipt of this order and the accompanying record to prepare a recommendation to the convening authority concerning the Report. To avoid any potential compromise of privileged information, neither Maj Deitch nor any other member of the 2 BW/JA staff that reviewed prior versions of the sanity board results may participate in preparing the recommendation. Appellant's counsel will be served a copy of the recommendation and will have **7 days** from date of receipt to provide comments to the recommendation for consideration by the convening authority. The convening authority may grant an extension of this time limit.

In compliance with the Court's order of 27 September 2007, the convening authority may order a rehearing or return the record to this Court for further review. The Court accepts the government's statement that the convening authority who reviewed the erroneous report is no longer the convening authority. In acting on this case, the new convening authority should not consider any prior versions of the sanity board results or any information derived from them.

FOR THE COURT

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal.

STEVEN LUCAS
Clerk of the Court