

**United States Court of Appeals
for the Armed Forces
Washington, D.C.**

UNITED STATES,)	USCA Dkt. No. 11-0320/AF
)	Crim.App. Dkt. No. 37722
Appellee)	
)	
v.)	<u>O R D E R</u>
)	
Crane)	
XU,)	
Appellant)	

On consideration of the petition for grant of review of the decision of the United States Air Force Court of Criminal Appeals, we conclude that Appellant's waiver of appellate counsel prior to the convening authority's action was premature and that the convening authority failed to appropriately credit Appellant for prior punishment under Article 15, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 815 (2006), for an offense also charged as part of Additional Charge II. Accordingly, it is, by the Court, this 25th day of May, 2011,

ORDERED:

That said petition is hereby granted on the following issues:

- I. WHETHER APPELLANT'S WAIVER OF APPELLATE COUNSEL, AT THE END OF TRIAL AND 117 DAYS BEFORE ACTION, WAS PREMATURE AND THEREFORE LEGALLY INVALID AND WITHOUT EFFECT.
- II. WHETHER THE STAFF JUDGE ADVOCATE'S RECOMMENDATION ERRONEOUSLY FAILED TO REFERENCE APPELLANT'S PREVIOUS ARTICLE 15 PUNISHMENT FOR AN OFFENSE ALSO CHARGED AS PART OF ADDITIONAL CHARGE II.
- III. WHETHER THE LOWER APPELLATE COURT FAILED TO APPROPRIATELY CREDIT APPELLANT FOR THE PRIOR ARTICLE 15 PUNISHMENT FOR AN OFFENSE ALSO CHARGED AS PART OF ADDITIONAL CHARGE II.

The decision of the United States Air Force Court of Criminal Appeals and the convening authority's action are set aside. The record of trial is returned to the Judge Advocate General of the Air Force for remand to the convening authority for new post-trial review and action. Thereafter, Article 66, UCMJ, and Article 67, UCMJ, respectively, will apply.

It is further ordered that Appellant's motion to supplement the record and Appellee's motion to file a second opposition to remand are hereby granted; and that Appellant's motion for remand, Appellee's motion to supplement the record, Appellant's second motion to supplement dated February 18, 2011, and Appellant's second motion to supplement the record dated April 1, 2011, are hereby denied as moot.

For the Court,

/s/ William A. DeCicco
Clerk of the Court

cc: The Judge Advocate General of the Air Force
Counsel for Appellant (WHITE)
Counsel for Appellee (KUBLER)