

48-2923. (KCMJ Art. 67) Review by Kansas court of appeals. (a) The Kansas court of appeals shall review the record in:

(1) All cases reviewed by a court of military review which the judge advocate general orders sent to the court of appeals for review; and

(2) all cases reviewed by a court of military review in which, upon petition of the accused and on good cause shown, the court of appeals has granted a review.

(b) The accused may petition the Kansas court of appeals for review of a decision of a court of military review within 60 days from the earlier of:

(1) The date on which the accused is notified of the decision of the court of military review; or

(2) the date on which a copy of the decision of the court of military review, after being served on appellate counsel of record for the accused, if any, is deposited in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the accused's official service record. The court of appeals shall act upon such a petition promptly in accordance with the rules of the court.

(c) In any case reviewed by it, the Kansas court of appeals may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the court of military review. In a case which the judge advocate general orders sent to the court of appeals, that action need be taken only with respect to the issues raised by the judge advocate general. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The court of appeals shall take action only with respect to matters of law.

(d) If the Kansas court of appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Kansas court of appeals may direct the judge advocate general to return the record to the court of military review for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the governor, the judge advocate general shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, the convening authority may dismiss the charges.

History: L. 1988, ch. 191, § 45; July 1.