

### **35.305 Return of record for reconsideration or revision.**

- (1) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for consideration of the ruling and any further appropriate action.
- (2) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned for the following:
  - (a) Reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;
  - (b) Reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or
  - (c) Increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

**Effective:** July 1, 1954

**History:** Created 1954 Ky. Acts ch. 99, sec. 60, effective July 1, 1954.