

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
)	
<i>Petitioner</i>)	
)	ORDER
v.)	
)	Misc. Dkt. No. 2005-02
First Lieutenant)	
JOSEPH J. HARDING,)	Panel No. 3
USAF,)	
)	
)	
<i>Respondent</i>)	

On 25 June 2005, the petitioner served notice on the military judge and defense counsel of its intent to file an appeal pursuant to Article 62, UCMJ, 10 U.S.C. § 862. According to Rule 21(d)(1), Joint Courts of Criminal Appeals Rules of Practice and Procedure, the petitioner then had 20 days “to forward the appeal, including an original and two copies of the record of trial, to the representative of the Government designated by The Judge Advocate General.” Under this rule, a petitioner is then obligated to “promptly file the original record with the Clerk of the Court.” Based upon these provisions, the petitioner was required to forward the record to the Government representative no later than 15 July 2005 and promptly file it with this Court upon receipt.

Rule 24.1 of the Air Force Court of Criminal Appeals Rules of Practice and Procedure permits parties, for good cause shown, to file for an enlargement of time. Rule 24.1(a) states, “Counsel must file motions for enlargement of time at least 1 day prior to the deadline to allow timely consideration by the Court.” Based upon this provision, the petitioner was required to seek an enlargement of time no later than 14 July 2005.

On 20 July 2005, the petitioner filed a motion with this Court asking that we suspend that part of Rule 21(d)(1) requiring trial counsel to forward the original record of trial and two copies to the government representative within 20 days of filing notice of intent to appeal with the trial court. In making this motion, the petitioner urges us to apply Rule 25, which permits this Court to suspend the application of the rules of court in a particular case for “good cause shown.”

The petitioner avers facts in support of the motion. The petitioner states that the court reporter, trial participants, and legal office staff have been diligent. The petitioner also notes that the record consists of 675 transcribed pages (six sections under seal), as well as 81 appellate exhibits (33 under seal) consisting of approximately 3,400 pages.

Additionally, because the record contains a significant amount of sealed materials, the preparation of the record has required special handling (i.e., only one paralegal could assist the court reporter in assembling the record). The petitioner states that counsel have completed their authentication, and that a final draft was mailed to the military judge for authentication on 19 July 2005. The respondent's opposition to the motion accepts these facts for purposes of the motion.

Even if we assume the facts as averred by the petitioner would constitute good cause for extending the deadline prescribed by Rule 21(d)(1), the petitioner has offered no explanation for why it failed to request such an extension within the time prescribed by Rule 24.1(a). The petitioner has failed to give us any reason whatsoever as to why we should not hold it to the straightforward requirement of this rule. *See United States v. Combs*, 38 M.J. 741 (A.F.C.M.R. 1993). We therefore rule that the petitioner has not established good cause for its noncompliance with Rule 24.1.

Accordingly, it is by the Court, this 29th day of July 2005,

ORDERED:

That petitioner's request to suspend application of Rule 21(d)(1) is DENIED.

ORR, Senior Judge (dissenting):

I respectfully disagree with my colleagues' decision. Rule for Courts-Martial (R.C.M.) 908(b)(6) requires that a trial counsel process an appeal "promptly and by expeditious means." Consistent with R.C.M. 908, the Joint Courts of Criminal Appeals Rules of Practice and Procedure set specific timelines for the filing of appeals under Article 62, UCMJ. Specifically, Rule 21(d)(1) states in pertinent part that: "The trial counsel shall have 20 days from the date written notice to appeal is filed with the trial court to forward the appeal, including an original and two copies of the record of trial, to the representative of the Government designated by The Judge Advocate General." Appellate government counsel shall then have "20 days . . . from the date the record is filed with the Court to file the appeal with supporting brief with the Court." Because the

rule authorizes two distinct 20-day timelines, it is still possible to achieve the intent of this rule (i.e. the prompt and expeditious filing of an appeal) even though the petitioner missed the first 20-day timeline. The appropriate solution would be to reduce the time that the petitioner has to file its appeal. As long as the petitioner files an appeal and supporting brief within 15 days of the date the record is filed with this Court, the intent of Rule 21(d)(1) and R.C.M. 908 would be satisfied.

FOR THE COURT

OFFICIAL

ANGELA M. BRICE
Clerk of Court