

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS



UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (FIRST)
)	
v.	)	Before Panel No. 2
)	
Airman Basic (E-1)	)	No. ACM S32727
LUCAS M. ANTONIEVICZ,)	
United States Air Force	)	29 July 2022
<i>Appellant</i>)	

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **5 October 2022**. The record of trial was docketed with this Court on 7 June 2022. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,


KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 29 July 2022.

Respectfully submitted,

[REDACTED]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

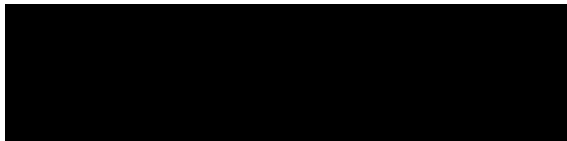
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32727
LUCAS M. ANTONIEVICZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

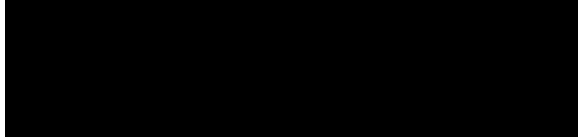


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 1 August 2022.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 2
)	
Airman Basic (E-1)	)	No. ACM S32727
LUCAS M. ANTONIEVICZ,)	
United States Air Force	)	28 September 2022
<i>Appellant</i>)	

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**



Pursuant to Rule 23.3(m)(3) and (m)(4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **4 November 2022**. The record of trial was docketed with this Court on 7 June 2022. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 27 April 2022, Appellant was tried by a military judge sitting as a special court-martial at Minot Air Force Base, North Dakota. Consistent with his pleas pursuant to a plea agreement, the military judge found Appellant guilty of one charge with two specifications of wrongful use of controlled substances in violation of Article 112a, UCMJ. Record (R.) at 74; Record of Trial (ROT) Vol. 1, Entry of Judgment in the Case of *United States v. AB Lucas M. Antonievicz*, dated 26 May 2022. The military judge sentenced Appellant to forfeit \$500 of pay per month for four months, confinement for 80 days, and a bad conduct discharge. R. at 112. The convening authority took no action on the findings or sentence in the case. ROT Vol. 1, Convening Authority Decision on Action – *United States v. AB Lucas M. Antonievicz*, dated 10 May 2022.

The record of trial is two volumes consisting of six prosecution exhibits, two defense exhibits, and seven appellate exhibits; the transcript is 113 pages. Appellant is not currently confined. Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,


KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 28 September 2022.

Respectfully submitted,

[REDACTED]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

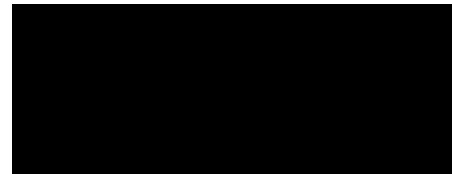
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32727
LUCAS M. ANTONIEVICZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline
United States Air Force

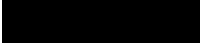


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 29 September 2022.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF TIME (THIRD)
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 2
)	
Airman Basic (E-1)	)	No. ACM S32727
LUCAS M. ANTONIEVICZ,)	
United States Air Force	)	25 October 2022
<i>Appellant</i>)	

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**



Pursuant to Rule 23.3(m)(3) and (m)(4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **4 December 2022**. The record of trial was docketed with this Court on 7 June 2022. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 27 April 2022, Appellant was tried by a military judge sitting as a special court-martial at Minot Air Force Base, North Dakota. Consistent with his pleas pursuant to a plea agreement, the military judge found Appellant guilty of one charge with two specifications of wrongful use of controlled substances in violation of Article 112a, UCMJ. Record (R.) at 74; Record of Trial (ROT) Vol. 1, Entry of Judgment in the Case of *United States v. AB Lucas M. Antonievicz*, dated 26 May 2022. The military judge sentenced Appellant to forfeit \$500 of pay per month for four months, confinement for 80 days, and a bad conduct discharge. R. at 112. The convening authority took no action on the findings or sentence in the case. ROT Vol. 1, Convening Authority Decision on Action – *United States v. AB Lucas M. Antonievicz*, dated 10 May 2022.

The record of trial is two volumes consisting of six prosecution exhibits, two defense exhibits, and seven appellate exhibits; the transcript is 113 pages. Appellant is not currently confined. Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,


KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 25 October 2022.

Respectfully submitted,

[REDACTED]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

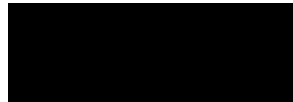
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32727
LUCAS M. ANTONIEVICZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 27 October 2022.



OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF TIME (FOURTH)
<i>Appellee</i>)	
)	
v.	)	Before Panel No. 2
)	
Airman Basic (E-1)	)	No. ACM S32727
LUCAS M. ANTONIEVICZ,)	
United States Air Force	)	26 October 2022
<i>Appellant</i>)	

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3), (m)(4), and (m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **3 January 2022**. The record of trial was docketed with this Court on 7 June 2022. From the date of docketing to the present date, 172 days have elapsed. On the date requested, 210 days will have elapsed.



On 27 April 2022, Appellant was tried by a military judge sitting as a special court-martial at Minot Air Force Base, North Dakota. Consistent with his pleas pursuant to a plea agreement, the military judge found Appellant guilty of one charge with two specifications of wrongful use of controlled substances in violation of Article 112a, UCMJ. Record (R.) at 74; Record of Trial (ROT) Vol. 1, Entry of Judgment in the Case of *United States v. AB Lucas M. Antonievicz*, dated 26 May 2022. The military judge sentenced Appellant to forfeit \$500 of pay per month for four months, confinement for 80 days, and a bad conduct discharge. R. at 112. The convening authority took no action on the findings or sentence in the case. ROT Vol. 1, Convening Authority Decision on Action – *United States v. AB Lucas M. Antonievicz*, dated 10 May 2022.

The record of trial is two volumes consisting of six prosecution exhibits, two defense exhibits, and seven appellate exhibits; the transcript is 113 pages. Appellant is not currently confined. Counsel is currently assigned 15 cases of which this is the only case pending an AOE before this Court. Counsel has not yet reviewed the record in this case. This case is counsel's first priority before this Court. However, counsel is on postpartum convalescent and primary caregiver leave until 23 January 2023.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. Appellant was informed of his right to a timely appeal, was consulted with regard to an enlargement of time, and agrees with this enlargement of time. An enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,


KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 November 2022.

Respectfully submitted,

[REDACTED]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

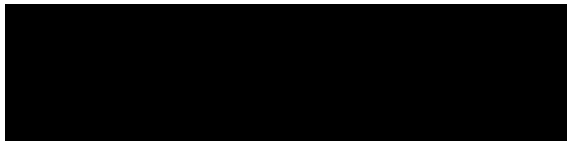
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman Basic (E-1)	)	ACM S32727
LUCAS M. ANTONIEVICZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

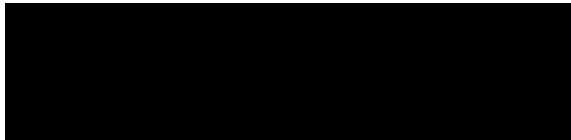


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 28 November 2022.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee,

v.

Airman Basic (E-1)

LUCAS M. ANTONIEVICZ,

United States Air Force,

Appellant.

**MOTION FOR ENLARGEMENT OF
TIME (FIFTH) (OOT)**

Before Panel No. 2

Case No. ACM S32727

Filed on: 29 December 2022

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(3), (m)(4), (m)(6), and (m)(7) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Undersigned counsel respectfully requests to withdraw the previously filed Motion for Enlargement of Time (Fifth), filed 28 December 2022, in order to edit date related typographical errors. Good cause exists to grant Appellant's EOT OOT as appellant's counsel is on maternity leave and undersigned counsel was assigned for the purpose of filing this EOT. As a result of a miscommunication, undersigned counsel did not file the EOT on time. Undersigned counsel takes full responsibility for the error, and it was done through no fault of Appellant. Appellant requests an enlargement for a period of 30 days, which will end on 2 February 2023. The record of trial was docketed with this Court on 7 June 2022. From the date of docketing to the present date, 205 days have elapsed. On the date requested, 240 days will have elapsed.

On 27 April 2022, Appellant was tried by a military judge sitting as a special court-martial at Minot Air Force Base, North Dakota. Consistent with his pleas pursuant to a plea agreement, the military judge found Appellant guilty of one charge with two specifications of wrongful use of

controlled substances in violation of Article 112a, UCMJ. Record (R.) at 74; Record of Trial (ROT) Vol. 1, Entry of Judgment in the Case of United States v. AB Lucas M. Antoniewicz, dated 26 May 2022. The military judge sentenced Appellant to forfeit \$500 of pay per month for four months, confinement for 80 days, and a bad conduct discharge. R. at 112. The convening authority took no action on the findings or sentence in the case. ROT Vol. 1, Convening Authority Decision on Action – United States v. AB Lucas M. Antoniewicz, dated 10 May 2022. The record of trial is two volumes consisting of six prosecution exhibits, two defense exhibits, and seven appellate exhibits; the transcript is 113 pages. Appellant is not currently confined. Counsel is currently assigned 15 cases of which this is the only case pending an AOE before this Court. Counsel has not yet reviewed the record in this case. This case is counsel's first priority before this Court. However, counsel is on postpartum convalescent and primary caregiver leave until 23 January 2023. Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. Appellant was informed of his right to a timely appeal, was consulted with regard to an enlargement of time, and agrees with this enlargement of time. An enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement.

Respectfully Submitted,

//signedASK29Dec22//

ABHISHEK S. KAMBLI

Major, USAFR

Appellate Counsel

Air Force Appellate Defense Division



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Appellate Government Division on 29 December 2022.

//signedASK29Dec22//

ABHISHEK S. KAMBLI

Major, USAFR

Appellate Counsel

Air Force Appellate Defense Division



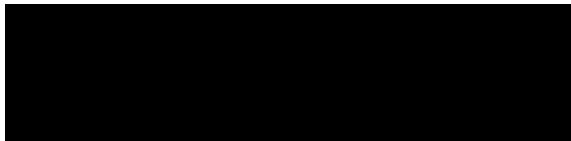
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME – OUT OF TIME
)	
Airman Basic (E-1)	)	ACM S32727
LUCAS M. ANTONIEVICZ, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time, Out of Time, to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

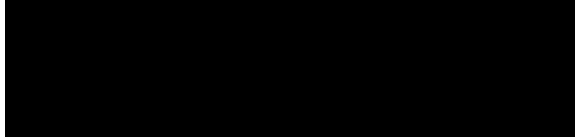


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 29 December 2022.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM S32727
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Lucas M. ANTONIEVICZ)	
Airman Basic (E-1))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 29 December 2022, counsel for Appellant submitted a Motion for Enlargement of Time Out of Time (Fifth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 3d day of January, 2023,

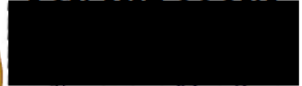
ORDERED:

Appellant’s Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **2 February 2023**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of his right to a timely appeal, (2) whether Appellant was advised of the request for an enlargement of time, and (3) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT



FLEMING E. KEEFE, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS


UNITED STATES	)	MERITS BRIEF
<i>Appellee,</i>)	
	)	Before Panel No. 2
<i>v.</i>)	
	)	No. ACM S32727
Airman Basic (E-1))	
LUCAS M. ANTONIEVICZ	)	2 February 2023
United States Air Force,)	
<i>Appellant</i>)	

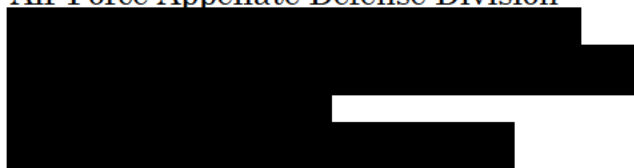
**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Submission of Case Without Specific Assignments of Error

Undersigned appellate defense counsel attests he has, on behalf of AB Antonievicz, carefully examined the record of trial in this case. Neither undersigned counsel nor AB Antonievicz concede that the findings and sentence are correct in law and fact, but submit this case to the Honorable Court on its merits with no attorney raised assignments of error. Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant raises one issue for this Honorable Court's consideration.

Respectfully Submitted,


ABHISHEK S. KAMBLI, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Appellate Government Division on 2 February 2023.

Respectfully submitted,

[REDACTED]

ABHISHEK S. KAMBLI, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

APPENDIX A

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matter:

I.

**WHETHER AB ANTONIEVICZ'S SENTENCE FOR WRONGFUL
USE OF CONTROLLED SUBSTANCES IS UNDULY SEVERE?**

Statement of the Case

On 27 April 2022, Airman Basic (AB) Lucas M. Antoniewicz was tried by a military judge sitting as a special court-martial at Minot Air Force Base, North Dakota. Record of Trial (ROT) Vol. 1, Entry of Judgment. In accordance with his pleas, the military judge found AB Antoniewicz guilty of one charge and one specification of wrongful use of a cocaine and one specification of wrongful use of amphetamines, both in violation of Article 112a, Uniform Code of Military Justice (UCMJ). Record (R.) at 74. The military judge sentenced AB Antoniewicz to 80 days confinement, forfeitures of five-hundred dollars a month for four months, a reprimand, and a bad conduct discharge (BCD). R. at 112. The Convening Authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Action.

Statement of Facts

AB Antoniewicz was the child of a single mother who immigrated to the United States from Brazil. Defense Exhibit (Def. Ext.) B. He grew up in a dangerous neighborhood without a father figure in his life. *Id.* In fact, AB Antoniewicz's father left his family at such a young age due to drug and alcohol abuse that he barely had any memory of him. *Id.* Despite a difficult upbringing, AB Antoniewicz received a full ride to the New Jersey Institute of Technology, but instead of taking this offer, he decided to join the Air Force. *Id.* His military test scores were 91 or higher in every category. Prosecution Exhibit (Pros. Ex. 1). He entered active duty on 18 February 2020 and was assigned to the 5th Aircraft Maintenance Squadron (AMXS) at Minot AFB, North Dakota. *Id.*

As a result of wrong choices in friends, AB Antoniewicz ended up facing disciplinary action in his Air Force career that culminated with the charged offenses. Def. Ex. B. Over the course of a 2-3 day period, AB Antoniewicz used cocaine and MDMA. Pros. Ex. 1. On 27 April 2022, AB Antoniewicz accepted responsibility for the offenses by pleading guilty. R. at 22. However, AB Antoniewicz was ready to accept responsibility sooner and asked for his trial date to be moved up. Appellate Exhibit (App. Ex.) III. That request was denied by the military judge. App. Ex. III.

During presentencing AB Antoniewicz's defense counsel presented the following evidence: (1) personal photographs, (2) a character statement from a fellow Airman who wrote about his character and integrity, (3) a letter of appreciation from a Technical Sergeant for being a model student in technical school and assisting those who required additional help during and after instruction hours, (4) an academic achievement award, and (5) a written unsworn statement. Def. Ex. A-B. The government asked for a sentence of 120 days confinement, 2/3 forfeiture of pay for six months, reduction to E-1 and a bad conduct discharge. R. at 95. AB Antoniewicz's defense counsel asked for 45 days confinement.¹ R. at 105. The military judge sentenced AB Antoniewicz to forfeiture of five hundred dollars pay per month for four months, 80 days confinement, and a bad conduct discharge. R. at 112.

¹ Per the terms of the plea agreement, AB Antoniewicz was required to accept a bad conduct discharge.

I.

AB ANTONIEVICZ'S SENTENCE WAS UNDULY SEVERE.

Standard of Review

This Court reviews sentence appropriateness *de novo* pursuant to its Article 66, UCMJ authority. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law

“Congress has vested responsibility for determining sentence appropriateness in the Courts of Criminal Appeals. The power to review a case for sentence appropriateness, which reflects the unique history and attributes of the military justice system, includes but is not limited to considerations of uniformity and evenhandedness of sentencing decisions.” *United States v. Durant*, 55 M.J. 258, 260 (C.A.A.F. 2001) (internal citations omitted). As the Court of Appeals for the Armed Forces has made clear, “Article 66(c)’s sentence appropriateness provision is a sweeping Congressional mandate to ensure a fair and just punishment for every accused.” *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (citations and internal quotations omitted). This provision “requires that the members of [the Courts of Criminal Appeals] independently determine, in every case within [their] limited Article 66, U.C.M.J., jurisdiction, the sentence appropriateness of each case [they] affirm.” *Id.* at 384-85 (alterations in original) (citations and internal quotations omitted).

In determining sentence appropriateness, this Court considers “the particular appellant, the nature and seriousness of the offenses, the appellant’s record of service,

and all matters contained in the record of trial.” *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009). Further, Courts of Criminal Appeals have the discretion to consider and compare other court-martial sentences when that court is reviewing a case for sentence appropriateness and relative uniformity. *See United States v. Wacha*, 55 M.J. 266, 268 (C.A.A.F. 2001).

Analysis

AB Antoniewicz’s sentence to 80 days of confinement, forfeitures of five hundred dollars per month for four months and a bad conduct discharge is unduly severe when considering the nature and seriousness of his offenses, his personal characteristics, and his record of service. *See Anderson*, 67 M.J. at 705.

Starting with the nature and seriousness of the offenses, AB Antoniewicz pled guilty to one charge and two specifications of unlawful use of a controlled substance in violation of Article 112a, UCMJ. Pros. Ex. 1. Although these are certainly serious offenses, AB Antoniewicz’s drug use was limited to 2-3 days and did not involve more serious criminal behavior such as habitual drug use, or manufacturing or distributing substances to others. This was a victimless crime and the sentence AB Antoniewicz received was unduly severe.

Although AB Antoniewicz does have positive aspects of his record of service. As an example, a fellow Airman who knew AB Antoniewicz and the offenses he committed still wrote a character letter on his behalf. Def. Ex. A. In addition, he received a letter of appreciation while he was in technical school for not only being a model student himself but helping others that were struggling. *Id.*

It is also important to note that AB Antoniewicz was only 20 years old at the time and he clearly has the ability to perform well in the civilian world as evidenced by his military test scores that were above 91 in every single category. Pros. Ex. 2. In addition, he turned down a full scholarship to college in order to serve in the United States Air Force. Def. Ex. B. He achieved all this despite being the child of an immigrant single mother who had no father figure in his life. *Id.* AB Antoniewicz certainly has the potential to rehabilitate and become a productive member of society. He even took proactive steps to find a civilian job and complete college courses before he was sentenced. *Id.* Finally, it should be noted that AB Antoniewicz not only pled guilty but wanted to do so at the earliest possible moment. He went as far as agreeing to release counsel and asking the court to move up his trial date in order to accept responsibility at the earliest possible moment. App. Ex. III. Unfortunately, his unduly severe sentence did not account for these personal characteristics.

Given the whole context of the nature and seriousness of the offenses, the record of trial, and AB Antoniewicz's personal characteristics and record of service, his sentence was unduly severe. *Anderson*, 67 M.J. at 705. Even based on the evidence adduced at trial, the sentence of 80 days confinement, a bad conduct discharge, and \$500 forfeitures for four months was unduly severe. Since AB Antoniewicz already served his term of confinement and accepted a bad conduct discharge as a term of his plea the only relief he can receive from this court is on the forfeiture portion of his sentence. Such relief is appropriate since the bad conduct discharge he accepted coupled with 80 days confinement was unduly severe given the nature of the misconduct and AB Antoniewicz's personal characteristics.

WHEREFORE, AB Antoniewicz respectfully requests that this Honorable Court disapprove the forfeiture portion of his sentence.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	ANSWER TO ASSIGNMENT
<i>Appellee,</i>	)	OF ERROR
)	
v.	)	Before Panel No. 2
)	
Airman Basic (E-1)	)	No. ACM S32727
LUCAS M. ANTONIEVICZ)	
United States Air Force	)	3 March 2023
<i>Appellant.</i>)	

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

ISSUE PRESENTED

**WHETHER AB ANTONIEVICZ’S SENTENCE FOR
WRONGFUL USE OF CONTROLLED SUBSTANCES IS
UNDULY SEVERE? ¹**

STATEMENT OF CASE

The United States generally agrees with Appellant’s statement of the case.

STATEMENT OF FACTS

Appellant joined the Air Force on 18 February 2020. In his first year of service, Appellant suffered a drug overdose, was reprimanded for alcohol in his dorm room and was issued a non-judicial punishment (NJP) for driving while intoxicated. (Pros. Ex. 1 at 2; Pros. Ex. 4; Pros. Ex. 5.) While on leave in Newark, New Jersey, Appellant sought out cocaine and amphetamines through social media. (Pros. Ex. 1; R. at 37-41, 47-51.) Appellant abused the drugs and suffered a suspected overdose when he returned to his duty station at Minot, North

¹ This issue was raised by Appellant, through appellant defense counsel, pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982)

Dakota. Narcan was used to treat Appellant, and his blood tested positive for amphetamines. (Pros. Ex. 1; R. at 96-99.)

Charges were preferred and Appellant pled guilty at a special court-martial to Charge III Specifications 1 and 2, in violation of Art. 112a UCMJ pursuant to a plea agreement. Appellant was advised that the maximum punishment available without the benefit of a plea agreement was 12 months of confinement, two-thirds forfeiture of pay for 12 months, reduction to E-1 and a bad conduct discharge. (R. at 52.) The plea agreement minimized the possible confinement period to 120 days for each specification, to run concurrently, and a bad conduct discharge. Two charges and two specifications were dismissed. (App. Ex. VI at 2; R. at 62-64.) Appellant was sentenced to 80 days of confinement, a bad conduct discharge and a forfeiture of \$500 pay for four months. (*Entry of Judgement*, 27 April 2022, ROT Vol.1.) Appellant served the term of confinement. Appellant now argues that his sentence was inappropriately severe and requests relief from the adjudged forfeitures. (App. Br., Appendix at 7)

ARGUMENT

APPELLANT’S SENTENCE IS NOT INAPPROPRIATELY SEVERE.

Standard of Review

This Court reviews sentence appropriateness *de novo*. United States v. Sauk, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc) (per curiam) (citation omitted). The Court may only affirm the sentence if it finds the sentence to be “correct in law and fact and determines, on the basis of the entire record, [it] should be approved.” Article 66(d)(1), UCMJ.

Law

Sentence appropriateness is assessed “by considering the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all matters contained in the record of trial.” United States v. Anderson, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009). Although this Court has great discretion to determine whether a sentence is appropriate, the Court has no authority to grant mercy. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted). Unlike the act of bestowing mercy through clemency, which was delegated to other channels by Congress, CCAs are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988).

Analysis

Appellant’s sentence should be affirmed as entered because the sentence was well within the parameters of the law, findings and plea agreement. The sentence is appropriate considering Appellant’s personal characteristics, the charged conduct, and his short service record.

Appellant claims the sentence failed to consider the seriousness of the offense, his personal characteristics and record of service. (App. Br., Appendix at 7) Regarding the nature of the offense, Appellant argues his drug use was a “victimless crime,” and “limited to 2-3 days”. (App. Br., Appendix at 7) Appellant fails to acknowledge the full scope of his criminal conduct and substance abuse. While on leave, Appellant sought out cocaine and amphetamines through social media. (Pros. Ex. 1 at 1-2.) He followed a person he barely knew to at least two different locations seeking out drugs. Appellant ingested the narcotics while he was on leave. (Pros. Ex. 1.) Two days later, Appellant returned to his duty station

and suffered a drug reaction in the dorms that required emergency medical aid. (Pros. 1. at 2.) Appellant's actions were dangerous, even if they did not victimize others. Appellant suffered a reaction days after ingesting narcotics. Drug use is criminalized and prosecuted in the military because if Appellant had suffered an overdose while performing his duties, he would have put the military mission and other service members at risk. The Air Force cannot tolerate behavior that might put the mission at risk. Drug use is a serious offense with unpredictable and dangerous consequences – which is why it has a maximum punishment of 5 years of confinement. The sentence adjudged in this case reflected the seriousness of the offense and should be affirmed.

Weeks after the suspected overdose, Appellant possessed alcohol in the dorms and was issued a Letter of Reprimand (LOR). Appellant responded to that letter “So long as I am still in the US Air Force, I will only show my best side to my leadership, my fellow airmen, and those who I choose to surround myself with.” (Pros. Ex. 4; R. at 99.) He then drove intoxicated, on the wrong side of the road, at night, with a car full of passengers. (Pros. Ex. 5; R. at 100.) These other instances of misconduct, after Appellant's drug overdose, demonstrate his lack of rehabilitative potential.

Appellant's eagerness to plead guilty and family circumstances were presented at trial. (R. at 93-95, 102-105.) Appellant reemphasizes those points now, in his argument for a reduced sentence. (App. Br., Appendix) Appellant already benefited from his eagerness to plead guilty. He was originally facing 12 months of confinement and two-thirds forfeiture of pay for 12 months. Because he accepted responsibility, Appellant was only sentenced to 80 days of confinement and \$500 in forfeitures for 4 months. Appellant claims the adjudged forfeiture will negatively affect his mother and support system. Those effects are a consequence of Appellant's

actions. Finally, Appellant argues that his service record deserves some mitigation credit. While he may have started his career with impressive test scores, those scores did not translate into the type of service deserving of any additional mitigation credit. Appellant's personal circumstances and service record do not warrant a further reduction in sentence.

Appellant is eager to earn his college degree and begin civilian employment. (R. at 103) The confinement period he served, and the adjudged forfeiture are part of the Air Force's efforts to rehabilitate him for that civilian life. After a dangerous suspected drug overdose, Appellant continued to put himself and others in danger. Confinement was the Air Force's strongest tool to help correct Appellant's behavior, and the 80 days confinement period was appropriate. By paying the \$2000 forfeiture amount, Appellant will suffer the final consequences of his poor decision making as he rejoins civilian life.

Appellant received "the punishment he deserves." United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988). He sought out drugs while on leave and suffered an overdose that sent him to the hospital. Neither Appellant's personal history nor service record merit a relief from the adjudged forfeitures. This Court should affirm the appropriate sentence returned by the military judge and deny this request for relief.

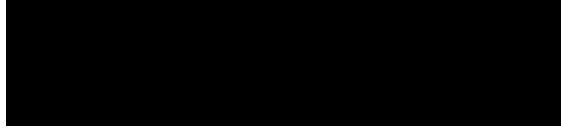
CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.



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Government Trial and Appellate Operations
Division Military Justice and Discipline Directorate

United States Air Force



MARY ELLEN PAYNE

Associate Chief

Government Trial and Appellate Operations

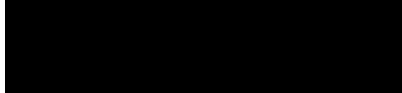
Division Military Justice and Discipline Directorate

United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 3 March 2023.



DEYANA F. UNIS, 1st Lt, USAF
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