

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(FIRST)
v.)	
	)	Before Panel No. 2
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	16 April 2023

**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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 60 days, which will end on **27 June 2023**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 48 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,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 16 April 2023.

**MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

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
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, 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.

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 to the Air Force Appellate Defense Division on 17 April 2023.

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 <i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(SECOND)
v.)	
	)	Before Panel No. 2
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	15 June 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **27 July 2023**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed. Counsel withdraws the motion of the same name, dated 14 June 2023, because of an error in the number of days elapsed when on the date requested.

On 31 October 2022, at Fort Mead, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge two three specifications of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928 (2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 23 Dec. 2022.) The military judge sentenced SrA Moore to 10 days’ confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months.

(EOJ.) The convening authority disapproved the adjudged forfeitures and waived automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, ROT Vol. 1, 8 Dec. 2022.)

The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. SrA Moore is not in confinement.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 15 June 2023.

**MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

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
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, 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.

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 to the Air Force Appellate Defense Division on 15 June 2023.

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	)	APPELLANT'S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(THIRD)
v.)	
	)	Before Panel No. 2
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	14 July 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **26 August 2023**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 137 days have elapsed. On the date requested, 180 days will have elapsed.

On 31 October 2022, at Fort Mead, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge two three specifications of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928 (2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 23 Dec. 2022.) The military judge sentenced SrA Moore to 10 days' confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months. (EOJ.) The convening authority disapproved the adjudged forfeitures and waived

automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, ROT Vol. 1, 8 Dec. 2022.)

The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. SrA Moore is not in confinement.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 14 July 2023.

**MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

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
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, 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.

PETE FERRELL, Lt Col, USAF
Director of Operations
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 to the Air Force Appellate Defense Division on 17 July 2023.

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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

UNITED STATES	)	No. ACM 40423
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL CHANGE
Mario D. MOORE)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 8th day of August, 2023,

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 2 and referred to Panel 3 for appellate review.

This panel letter supersedes all previous panel assignments.



FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(FOURTH)
v.)	
	)	Before Panel No. 3
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	16 August 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **25 September 2023**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 31 October 2022, at Fort Mead, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge two three specifications of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928 (2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 23 Dec. 2022.) The military judge sentenced SrA Moore to 10 days’ confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months. (EOJ.) The convening authority disapproved the adjudged forfeitures and waived

automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, ROT Vol. 1, 8 Dec. 2022.)

The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. SrA Moore is not in confinement.

Counsel is currently assigned 20 cases, with 6 pending initial brief before this Court. Counsel has not yet begun review in this case. Three cases at this Court have priority over this case:

1. *United States v. Conway*, ACM 40372. The record of trial consists of 6 prosecution exhibits, 17 defense exhibits, 10 appellate exhibits, and 1 court exhibit. The transcript is 128 pages. Counsel has not yet begun review of the record in this case.
2. *United States v. Denney*, ACM 40360. The record of trial consists of 17 prosecution exhibits, 11 defense exhibits, and 5 appellate exhibits. The transcript is 99 pages. Counsel has not yet begun review of the record in this case.
3. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has not yet begun review of the record in this case.

In addition, counsel has a reply in *United States v. Cornwell*, ACM 40335, due on 23 August 2023, as well as a grant brief due on 8 September 2023 in *United States v. Palik*, ACM 40225.

Counsel separated from active duty on 21 July 2023. However, counsel will be returning to JAJA as a reservist on a one-year tour and plans to maintain all cases through the transition. The tour was to start on 1 August 2023 but did not begin until today, 15 August 2023. Counsel still has no access to government computers.

Through no fault of SrA Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. SrA Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review SrA Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 16 August 2023.

**MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

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
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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.

PETE FERRELL, Lt Col, USAF
Director of Operations
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 to the Air Force Appellate Defense Division on 17 August 2023.

PETE FERRELL, Lt Col, USAF
Director of Operations
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 <i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(FIFTH)
v.)	
	)	Before Panel No. 3
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	12 September 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **25 October 2023**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 197 days have elapsed. On the date requested, 240 days will have elapsed.

On 31 October 2022, at Fort Meade, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge two three specifications of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928 (2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 23 Dec. 2022.) The military judge sentenced SrA Moore to 10 days’ confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months. (EOJ.) The convening authority disapproved the adjudged forfeitures and waived

automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, ROT Vol. 1, 8 Dec. 2022.)

The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. SrA Moore is not in confinement.

Counsel is currently assigned 22 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. Three cases at this Court have priority over this case:

1. *United States v. Conway*, ACM 40372. The record of trial consists of 6 prosecution exhibits, 17 defense exhibits, 10 appellate exhibits, and 1 court exhibit. The transcript is 128 pages. Counsel has completed review of this record.
2. *United States v. Denney*, ACM 40360. The record of trial consists of 17 prosecution exhibits, 11 defense exhibits, and 5 appellate exhibits. The transcript is 99 pages. Counsel has begun review of this record.
3. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has not yet begun review of the record in this case.

Through no fault of SrA Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. SrA Moore was specifically informed of his right to timely appeal, was consulted with regard to this

enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review SrA Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 12 September 2023.

H, Maj, USAFR
unsel

Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

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
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 13 September 2023.

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 40423
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Mario D. MOORE)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 12 September 2023, counsel for Appellant submitted a Motion for Enlargement 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 19th day of September, 2023,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **25 October 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 Appellant's 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
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(SIXTH)
v.)	
	)	Before Special Panel
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	13 October 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **24 November 2023**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 228 days have elapsed. On the date requested, 270 days will have elapsed. Counsel withdraws the motion of the same name filed 13 October 2023 as it misidentified the panel.

On 31 October 2022, at Fort Meade, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge two three specifications of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928 (2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 23 Dec. 2022.) The military judge sentenced SrA Moore to 10 days’ confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months. (EOJ.) The convening authority disapproved the adjudged forfeitures and waived

automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, ROT Vol. 1, 8 Dec. 2022.)

The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. SrA Moore is not in confinement.

Counsel is currently assigned 24 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. Three cases at this Court have priority over this case:

1. *United States v. Cook*, ACM 40333. The trial transcript is 639 pages long and the record of trial is comprised of 11 volumes containing 28 prosecutions exhibits, 10 defense exhibits, 48 appellate exhibits, and zero court exhibits. Counsel has drafted the majority of the brief in this case.
2. *United States v. Denney*, ACM 40360. The record of trial consists of 17 prosecution exhibits, 11 defense exhibits, and 5 appellate exhibits. The transcript is 99 pages. Counsel has begun review of this record.
3. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has not yet begun review of the record in this case.

Through no fault of SrA Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. SrA Moore was specifically informed of his right to timely appeal, was consulted with regard to this

enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review SrA Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 13 October 2023.

**MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

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
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, USAF,)	
<i>Appellant.</i>	)	Special Panel
)	

**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 16 October 2023.

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 <i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(SEVENTH)
v.)	
	)	Before Special Panel
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	13 November 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **24 December 2023**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 259 days have elapsed. On the date requested, 300 days will have elapsed.

On 31 October 2022, at Fort Meade, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge two three specifications of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928 (2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 23 Dec. 2022.) The military judge sentenced SrA Moore to 10 days’ confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months. (EOJ.) The convening authority disapproved the adjudged forfeitures and waived

automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, ROT Vol. 1, 8 Dec. 2022.)

The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. SrA Moore is not in confinement.

Counsel is currently assigned 27 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. Two cases at this Court have priority over this case:

1. *United States v. Denney*, ACM 40360. The record of trial consists of 17 prosecution exhibits, 11 defense exhibits, and 5 appellate exhibits. The transcript is 99 pages. Counsel has completed the AOE and will file shortly.
2. *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has begun review of the record in this case.

Through no fault of SrA Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. SrA Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review SrA Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 13 November 2023.

**MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, USAF,)	
<i>Appellant.</i>	)	Special Panel
)	

**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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

PETE FERRELL, Lt Col, USAF
Director of Operations
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 to the Air Force
Appellate Defense Division on 15 November 2023.

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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

UNITED STATES	)	No. ACM 40423
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Mario D. MOORE)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 13 November 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

We note Appellant’s motion included an affirmation from appellate defense counsel that Appellant was advised of his right to a timely appeal prior to Appellate defense counsel’s submission of the above referenced motion, and, that Appellant consented to his counsel filing 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 20th day of November, 2023,

ORDERED:

Appellant’s Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **24 December 2023**.

It is further ordered:

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, continue to include a statement as to: (1) whether Appellant was advised of Appellant’s 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.

Appellant’s counsel is advised that given the number of enlargements

granted thus far, any further requests for an enlargement of time may necessitate a status conference.



FOR THE COURT

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT'S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(EIGHTH)
v.)	
	)	Before Special Panel
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	13 December 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **23 January 2024**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 289 days have elapsed. On the date requested, 330 days will have elapsed.

On 31 October 2022, at Fort Meade, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge two three specifications of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928 (2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 23 Dec. 2022.) The military judge sentenced SrA Moore to 10 days' confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months. (EOJ.) The convening authority disapproved the adjudged forfeitures and waived

automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, ROT Vol. 1, 8 Dec. 2022.)

The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. SrA Moore is not in confinement.

Counsel is currently assigned 25 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. One case at this Court has priority over this case: *United States v. Williams*, ACM 40410. The record of trial consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has begun review of the record in this case.

Additionally, counsel will have reply briefs to prepare in *Cook* (ACM 40333) and *Denney* (40360), with both anticipated due dates over the Christmas holiday. Counsel is also filling in the director of staff for JAJ due to an unforeseen medical situation. This will occur for two weeks in December and two weeks in January, and will inhibit progress on this assignment of error.

Through no fault of SrA Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. SrA Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review SrA Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 13 December 2023.

**MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, USAF,)	
<i>Appellant.</i>	)	Special Panel
)	

**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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

PETE FERRELL, Lt Col, USAF
Director of Operations
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 to the Air Force
Appellate Defense Division on 13 December 2023.

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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

UNITED STATES	)	No. ACM 40423
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Mario D. MOORE)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 13 December 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) 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 19th day of December, 2023,

ORDERED:

Appellant’s Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **23 January 2024**.

Appellant’s counsel is advised that should Appellant deem it necessary to request any additional enlargements of time, the court will require a status conference prior to ruling on any additional enlargements of time.



FOR THE COURT

FLEMING/E. KEEFE, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	(NINTH)
v.)	
	)	Before Special Panel
Senior Airman (E-4))	
MARIO D. MOORE,	)	No. ACM 40423
United States Air Force)	
<i>Appellant</i>	)	14 January 2024

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **22 February 2024**. The record of trial was docketed with this Court on 27 February 2023. From the date of docketing to the present date, 321 days have elapsed. On the date requested, 360 days will have elapsed.

On 31 October 2022, at Fort Meade, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge two three specifications of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928 (2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 23 Dec. 2022.) The military judge sentenced SrA Moore to 10 days’ confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months. (EOJ.) The convening authority disapproved the adjudged forfeitures and waived

automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, ROT Vol. 1, 8 Dec. 2022.)

The record of trial consists of 5 prosecution exhibits, 1 defense exhibit, 11 appellate exhibits, and 1 court exhibit. The transcript is 88 pages. SrA Moore is not in confinement.

Counsel is currently assigned 23 cases, with 8 pending initial brief before this Court. Counsel has completed review of this case. Counsel anticipates this will be the final required EOT for this case. The only higher priority case is *United States v. Williams*, ACM 40410. The record of trial in that case consists of 10 prosecution exhibits, 15 defense exhibits, and 73 appellate exhibits. The transcript is 1,769 pages. Counsel has reviewed approximately half the record of trial in *Williams*, but had to pause for an unexpected motion to view sealed portions of the transcript. Counsel will simultaneously work this case and *Williams* over the next month.

Through no fault of SrA Moore, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. SrA Moore was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review SrA Moore's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 14 January 2024.

**MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40423
MARIO D. MOORE, USAF,)	
<i>Appellant.</i>	)	Special Panel
)	

**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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

J. PETE FERRELL, Lt Col, USAF
Director of Operations
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 to the Air Force
Appellate Defense Division on 17 January 2024.

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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

UNITED STATES	)	No. ACM 40423
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Mario D. MOORE)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 14 January 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Nineth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

On 22 January 2024, a status conference was held to discuss the status of this case. Lieutenant Colonel (Lt Col) Allen S. Abrams and Major Matthew L. Blyth represented Appellant. Lt Col Pete Ferrell represented Appellee. Appellate defense counsel explained that he has completed review of the record of trial and identified a few assignments of error, has Appellant’s consent for this enlargement of time, and does not anticipate seeking another full 30-day enlargement of time, should this one be granted.

The court has considered Appellant’s motion, case law, and this court’s Rules of Practice and Procedure.

Accordingly, it is by the court on this 22d day of January, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Nineth) is **GRANTED**. Appellant shall file any assignments of error not later than **22 February 2024**.



FOR THE COURT

FLEMING/E. KEEFE, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MERITS BRIEF
<i>Appellee,</i>)	
	)	Before Special Panel
v.)	
	)	No. ACM 40423
Senior Airman (E-4))	
MARIO D. MOORE,	)	14 February 2024
United States Air Force)	
<i>Appellant</i>)	

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

ASSIGNMENTS OF ERROR

I.¹

**WHETHER SRA MOORE’S SENTENCE IS INAPPROPRIATELY
SEVERE.**

II.

**R.C.M. 1106(d)(3) PROVIDES AN ACCUSED FIVE DAYS TO
RESPOND TO A VICTIM’S POST-TRIAL SUBMISSION OF
MATTERS. DID THE CONVENING AUTHORITY VIOLATE
BASIC DUE PROCESS RIGHTS WHEN HE ACTED WITHOUT
SERVING SRA MOORE WITH THE VICTIM’S POST-TRIAL
SUBMISSION?**

STATEMENT OF THE CASE

On 31 October 2022, at a general court-martial at Fort Meade, Maryland, Appellant, Senior Airman (SrA) Mario D. Moore pleaded guilty before a military judge to three specifications of assault consummated by a battery in violation of

¹ Issues I and II are raised in the Appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Article 128, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928 (2018). (Entry of Judgment (EOJ), 23 Dec. 2022.) The military judge sentenced SrA Moore to ten days' confinement, a bad-conduct discharge, reduction to the grade of E-2, and forfeiture of \$1,300 pay per month for 6 months. (R. at 88; EOJ.) The convening authority disapproved the adjudged forfeitures and waived automatic forfeitures for the benefit of SrA Moore's dependent children. (Convening Authority Decision on Action, 8 Dec. 2022.)

Issues and Argument

The undersigned appellate defense counsel attests he has, on behalf of Appellant, carefully examined the record of trial in this case. Appellant does not admit the findings or sentence are correct in law and fact, but submits the case to this Honorable Court on its merits. However, Appellant personally submits two errors for this Court's consideration.

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

APPENDIX

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 matters:

I.

SRA MOORE'S SENTENCE IS INAPPROPRIATELY SEVERE.

Facts

SrA Moore grew up deeply involved in the church. (Def. Ex. A at 1.) It provided an anchor for his childhood and a promise for his future. (*Id.* at 1, 3.) He joined the Air Force after a chance meeting with an Air Force dependent at a fast-food establishment. (*Id.* at 1.) He felt transformed by his Air Force experience and remains thankful for his opportunity to serve. (*Id.* at 2.)

SrA Moore met IC in the dormitory rooms in 2018. (Pros. Ex. 1 at 1.) Over the following years, they spent time together at work, in each other's dorm rooms, and in other social activities. (*Id.*) After sharing a hug on a difficult day, SrA Moore called IC to catch up and hang out at her house. (*Id.*) SrA Moore discussed the hug they had shared earlier that day and said he wanted to feel the warmth again. (*Id.* at 2.) SrA Moore pulled her towards him by the wrists; when IC pulled back, she fell over. (*Id.*) SrA Moore then got on top of IC and put his leg on the inside of her thighs. (*Id.*) IC got up and texted a friend, then said she was going to pick up that friend because of an emergency. (*Id.*) After IC and SrA Moore hugged outside, SrA Moore slapped her buttocks with his hand. (*Id.*) SrA Moore immediately attempted to

apologize by texting IC, but she had already blocked him on her phone. (*Id.* at 3.)

SrA Moore cooperated with the Air Force Office of Special Investigations (OSI) in the investigation, provided a verbal and written statement, and told OSI that he hoped to someday apologize to IC. (*Id.* at 4.) He pleaded guilty at his court-martial to three specifications of assault consummated by battery. (R. at 14.)

SrA Moore apologized profusely at his court-martial. (Def. Ex. A at 2.) He accepted responsibility for letting those around him down. (*Id.*) He also apologized directly to IC, letting her know he was “incredibly sad and disappointed” in himself for ruining the friendship and that she did not deserve it from a trusted friend and wingman. (*Id.*)

SrA Moore’s plea agreement limited his confinement but did not mandate a bad-conduct discharge. (App. Ex. X at 2.) The military judge sentenced SrA Moore to a bad-conduct discharge, forfeiture of \$1,300.00 per month for six months, confinement for ten days, and a reduction to the grade of E-2. (R. at 88.)

Standard of Review

This Court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law

This Court “may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as [it] finds correct in law and fact and determines, on the basis of the entire record, should be approved.” Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018). Considerations include “the particular appellant, the

nature and seriousness of the offense[s], 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) (citations omitted). “The breadth of the power granted to the Courts of Criminal Appeals to review a case for sentence appropriateness is one of the unique and longstanding features of the [UCMJ].” *United States v. Hutchison*, 57 M.J. 231, 233 (C.A.A.F. 2002) (citations omitted). This Court’s role in reviewing sentences under Article 66(d) is to “do justice,” as distinguished from the discretionary power of the convening authority to grant mercy. *See United States v. Boone*, 49 M.J. 187, 192 (C.A.A.F. 1998).

Analysis

SrA Moore’s bad-conduct discharge is inappropriately severe in light of the actual offenses remaining on the charge sheet. While originally referred both as violations of Article 120, UCMJ, 10 U.S.C. § 920 (2018), the plea agreement reduced the specifications to assault consummated by a battery or withdrew them altogether. (App. Ex. X at 1; Charge Sheet.) While a bad-conduct discharge is perhaps expected with an Article 120, UCMJ, offense, it is not for an Article 128, UCMJ, offense. The imposition of a bad-conduct discharge is inappropriately severe for *these* offenses. And the task of the sentencing authority is to adjudge a sentence for the offense and the offender—not for an offense that *could* have been before the court but was not. By sentencing him for what the offense could have been, the sentencing authority devalued the plea agreement and the importance of not having a sex offense among the charges. This Honorable Court should exercise its authority under Article 66, UCMJ, and disapprove the bad-conduct discharge as inappropriately severe.

WHEREFORE, SrA Moore respectfully requests this Honorable Court disapprove his bad-conduct discharge.

II.

THE CONVENING AUTHORITY VIOLATED BASIC DUE PROCESS RIGHTS WHEN HE ACTED WITHOUT SERVING SRA MOORE WITH THE VICTIM'S POST-TRIAL SUBMISSION OF MATTERS.

Additional Facts

SrA Moore's court-martial occurred on 31 October 2022. (R. at 1.) On 3 November 2022, SrA Moore's defense counsel submitted matters on his behalf, requesting the convening authority disapprove the forfeitures of pay. (Submission of Matters on Behalf of Amn Mario D. Moore, 3 Nov. 2022.) IC submitted her victim impact statement from the court-martial as her submission of matters on 31 October 2022. (IC Submission of Matters, 31 Oct. 2022). SrA Moore's defense counsel provided a receipt for her submission on 10 November 2022. (Receipt for Victim Submission of Matters, 10 Nov. 2022.) There is no receipt from SrA Moore. The convening authority took action on 8 December 2022; in the action, the convening authority stated that he considered both SrA Moore's and IC's statements. (Convening Authority Decision on Action, 8 Dec. 2022.)

Standard of Review

This Court assesses proper post-trial processing de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citing *United States v. Kho*, 54 M.J. 63 (C.A.A.F. 2000)). When reviewing post-trial errors, this Court will grant relief if an appellant presents "some 'colorable showing of possible prejudice.'" *United*

States v. LeBlanc, 74 M.J. 650, 660 (A.F. Ct. Crim. App. 2015) (quoting *United States v. Scalo*, 60 M.J. 435, 437 (C.A.A.F. 2005)).

Law

Under Rule for Courts-Martial (R.C.M.) 1106A(a), a victim may “submit matters to the convening authority for consideration in the exercise of the convening authority’s powers under R.C.M. 1109 or 1110.” “The convening authority shall ensure any matters submitted by a crime victim under this subsection be provided *to the accused* as soon as practicable.” R.C.M. 1106A(c)(3) (emphasis added). If a crime victim submits matters under R.C.M. 1106A, “the accused shall have five days from receipt of those matters to submit any matters in rebuttal.” R.C.M. 1106(d)(3). “Before taking or declining to take any action on the sentence under this rule, the convening authority shall consider matters timely submitted under R.C.M. 1106 and 1106A, if any, by the accused and any crime victim.” R.C.M. 1109(d)(3)(A). A convening authority “may not consider matters adverse to the accused without providing the accused an opportunity to respond.” R.C.M. 1106A(c)(2)(B), Discussion.

“[T]he convening authority is an appellant’s ‘best hope for sentence relief.’” *United States v. Bischoff*, 74 M.J. 664, 669 (A.F. Ct. Crim. App. 2015) (quoting *United States v. Lee*, 50 M.J. 296, 297 (C.A.A.F. 1999)). “The essence of post-trial practice is basic fair play--notice and an opportunity to respond.” *United States v. Leal*, 44 M.J. 235, 237 (C.A.A.F. 1996). “Serving victim clemency correspondence on the accused for comment before convening authority action protects an accused’s due process rights under the Rules for Courts-Martial and preserves the actual and perceived

fairness of the military justice system.” *United States v. Bartlett*, 64 M.J. 641, 649 (A. Ct. Crim. App. 2007).

This Court addressed a similar issue in *United States v. Halter*, No. ACM S32666, 2022 CCA LEXIS 9 (A.F. Ct. Crim. App. 6 Jan. 2022) (unpub. op.). In *Halter*, the victim submitted matters to the convening authority, who served those matters on the accused three days *after* the decision on action memorandum. *Id.* at *8. This Court wrote that “[t]his is not only clear error but a violation of Appellant’s most basic due process rights under the Rules for Courts-Martial.” *Id.* (citing *Bartlett*, 64 M.J. at 649). *See also United States v. Valentin-Andino*, 83 M.J. 537, 542–43 (A.F. Ct. Crim. App. 2023) (finding a similar violation where the convening authority, when acting on both clemency and a deferment request, considered a victim submission without affording the appellant the opportunity to respond)

For such post-trial errors, the Court of Appeals for the Armed Forces (CAAF) requires the appellant “to demonstrate prejudice by stating what, if anything, would have been submitted to ‘deny, counter or explain’ the new matter.” *United States v. Chatman*, 46 M.J. 321, 323 (C.A.A.F. 1997). “[T]he threshold should be low, and if an appellant makes some colorable showing of possible prejudice, we will give that appellant the benefit of the doubt and ‘we will not speculate on what the convening authority might have done’ if defense counsel had been given an opportunity to comment.” *Id.* at 323–34 (quoting *United States v. Jones*, 44 M.J. 242, 244 (C.A.A.F. 1996)). The low threshold for material prejudice “reflects the convening authority’s vast power in granting clemency and is designed to avoid undue speculation as to how

certain information might impact the convening authority's exercise of such broad discretion." *Scalo*, 60 M.J. at 437 (citation omitted). "If the appellant makes such a showing, the Court of Criminal Appeals must either provide meaningful relief or return the case to the Judge Advocate General concerned for a remand to a convening authority" for new post-trial action. *United States v. Wheelus*, 49 M.J. 283, 289 (C.A.A.F. 1998).

Analysis

SrA Moore never signed receipt for the submission of matters. Under R.C.M. 1106(d)(3), he had five days to provide a response. As this Court recognized in *Halter*, making a decision on action without allowing an opportunity to respond was clear error. *See* 2022 CCA LEXIS 9, at *8. To ensure SrA Moore's due process rights are preserved, this Court should order new post-trial processing so that a fully-informed convening authority can decide whether to provide SrA Moore additional relief.

WHEREFORE, SrA Moore respectfully requests that this Honorable Court remand for new post-trial processing.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 14 February 2024.

**MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762**

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' ANSWER TO
<i>Appellee,</i>	)	ASSIGNMENTS OF ERROR
)	
v.	)	Before Special Panel
)	
Senior Airman (E-4)	)	No. ACM 40423
MARIO D. MOORE)	
United States Air Force	)	15 March 2024
<i>Appellant.</i>)	

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

ISSUES PRESENTED¹

I.

**WHETHER APPELLANT'S SENTENCE IS
INAPPROPRIATELY SEVERE.**

II.

**R.C.M. 1106(d)(3) PROVIDES AN ACCUSED FIVE DAYS TO
RESPOND TO A VICTIM'S POST-TRIAL SUBMISSION OF
MATTERS. DID THE CONVENING AUTHORITY
VIOLATE BASIC DUE PROCESS RIGHTS WHEN HE
ACTED WITHOUT SERVING APPELLANT WITH THE
VICTIM'S POST-TRIAL SUBMISSION?**

STATEMENT OF CASE

On 31 October 2022, a military judge sitting as the general court-martial convicted Appellant, consistent with his pleas, of three specifications of assault consummated by battery in violation of Article 128, UCMJ. (R. at 48-49.) The military judge sentenced Appellant to a reduction to the grade of E-2, forfeiture of \$1,300.00 per month for six months, 10 days of

¹ Appellant raises both issues pursuant to United States v. Grostefon, 21 M.J. 431 (C.A.A.F. 1982).

confinement, and a bad-conduct discharge. (R. at 88.) After considering Appellant and IC's post-trial submissions, the convening authority disapproved the adjudged forfeitures and waived the automatic forfeitures for the benefit of Appellant's dependent children. (*Entry of Judgement* (EOJ), 23 December 2020, ROT, Vol. 1.)

STATEMENT OF FACTS

The Crime

One day in early 2021, Appellant text messaged IC asking where she was. (Pros. Ex. 1 at 1.) IC, who had been close friends with Appellant for a little over two years, thought Appellant sounded troubled. (Id.) Upon seeing Appellant in person, IC asked if he was okay, at which point Appellant asked IC for a hug. (Id.) IC obliged and gave Appellant a hug before parting ways with him. (Id.)

Later that evening, Appellant visited IC at the house she shared with three roommates, one of whom was a mutual friend of Appellant and IC. (Id. at 2.) After receiving a tour of the communal areas, Appellant asked IC if their mutual friend was home, and IC replied that he was not. (Id. at 2.) Appellant then closed the door to IC's living space and sat close to IC, who was on the couch. (Id.) He began talking about their hug earlier that day—how they had never touched before and that he enjoyed it. (Id.) Appellant told IC that he wanted to feel the warmth of her hug again, and talked about what it would have been like if they had engaged in a romantic relationship. (Id.)

IC, who did not have romantic feelings for Appellant, tried to change the subject. (Id.) She then stood up, at which point Appellant—who was still seated on the couch—grabbed her wrists and pulled her towards him to bring her closer. (Id.) In the process of resisting and pulling away from Appellant, IC fell on her back. (R. at 23; Pros. Ex. 1 at 2.) As IC laid on the

ground, Appellant—who was also on the ground by this point—“held her down,” and forcefully placed his leg between her thighs, which pushed them further apart. (R. at 31; Pros. Ex. 1 at 2.)

IC resisted, got up, and text messaged her best friend, LP, with a request that she call due to an “emergency.” (Pros. Ex. 1 at 2.) LP called IC shortly thereafter, who responded—loud enough for Appellant to hear—that she would leave immediately to pick up LP. (Id.) As IC left her house, Appellant followed her outside and then slapped her buttocks with his hand as she went to get in her car. (Id.)

The Accountability

Pursuant to a plea agreement, Appellant elected a trial by military judge alone and pled guilty to three specifications of assault consummated by battery for: (1) pulling IC by the wrists, (2) touching her buttocks, and (3) touching her inner thighs with his leg. (App. Ex. X; R. at 14.) The plea agreement limited the maximum confinement that the court-martial could adjudge to 150 days per specification, with all confinement to run concurrently. (App. Ex. X.) It contained no other limitations on sentencing. (Id.) The military judge determined that Appellant’s guilty plea was provident and found him guilty of the offenses. (R. at 48-49.) In exchange for Appellant’s guilty plea, the prosecution dismissed two abusive sexual contact offenses.

In the sentencing proceedings that followed, LP testified about a time that she and IC witnessed Appellant at the gym and how IC was “triggered,” “frozen up,” and “had a numb expression.” (R. at 62-63.) LP recalled that she and SrA IC left the gym and that SrA IC cried as they sat in her car. (R. at 63-64.) IC, through counsel, presented a written unsworn statement in which she described how her friend, Appellant, “became her tormentor.” (Court Ex. A.) IC recalled crying for “hours and hours” the night of the assaults and being “miserable” because she “never thought someone [she] trusted could betray [her] like that.” (Id.) Recounting

how she stayed away from her house because it reminded her of the assaults, IC described “crying every morning because it reminded [her] of it,” and “crying every night because [she] blamed [her]self.” (Id.) In describing the long-term impact of Appellant’s crimes, IC expressed a loss of faith in both herself and other people after being assaulted by “a longtime friend that [she] considered family,” someone she thought she could trust. (Id.) IC stated that she found herself “automatically mistrusting” both new people and old friends, and struggling to maintain friendships—especially with men, who she could “no longer hug... without being reminded of [Appellant].” (Court Ex. A.) The defense’s sentencing presentation consisted of testimony from Appellant’s mother about his upbringing, and unsworn statements by Appellant in written and verbal form. (R. at 68-78; Def. Ex. A.)

After the convening authority’s action, Appellant’s sentence—as entered into the record—consisted of reduction to the grade of E-2, confinement for a total of 10 days, and a bad-conduct discharge. (EOJ, 23 December 2022, ROT, Vol. 1.)

ARGUMENT

I.

APPELLANT’S SENTENCE IS NOT INAPPROPRIATELY SEVERE IN LIGHT OF HIS CRIMES.

Standard of Review

This Court reviews the appropriateness of an appellant’s sentence *de novo*. See United States v. McAlhane, 83 M.J. 164, 166 (C.A.A.F. 2023).

Law

Pursuant to Article 66(d), UCMJ, this Court “may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” 10 U.S.C. § 866(d). The purpose of such review is “to

ensure ‘that justice is done and that the accused gets the punishment he deserves.’” United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994) (quoting United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988)).

In assessing sentence appropriateness, this Court considers “the particular appellant, the nature and seriousness of the offense[s], the appellant’s record of service, and all matters contained in the record of trial.” United States v. Hamilton, 77 M.J. 579, 587 (A.F. Ct. Crim. App. 2017) (citations omitted). The Court also considers the “limits of the [plea agreement] that the appellant voluntarily entered into with the convening authority.” United States v. Fields, 74 M.J. 619, 626 (A.F. Ct. Crim. App. 2015).

Although this Court has discretion to determine whether a sentence is appropriate, it has “no power to ‘grant mercy.’” 77 M.J. at 587 (citing United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010)); *see also* United States v. Walters, 71 M.J. 695, 698 (A.F. Ct. Crim. App. 2012) (“[W]e are not authorized to engage in exercises of clemency.”). Thus, as long as a sentence is not inappropriately severe, this Court may affirm it even if it is not what this Court would have adjudged:

By affirming a sentence, we do not necessarily mean that it is the sentence we would have adjudged had we been the sentencing authority. The numerous permutations and combinations of sentencing alternatives available to the sentencing authority are so broad that, normally, there will not be only one sentence that is appropriate for a particular appellant. Thus, it may be more fitting for this Court to find that a particular sentence “is not inappropriate,” rather than “is appropriate.”

United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994).

Analysis

Citing the dismissal of two abusive sexual contact offenses pursuant to the plea agreement, Appellant contends that the adjudged bad-conduct discharge is inappropriately severe “in light of

the actual offenses remaining on the charge sheet.”² (App. Br., Appx. at 3.) According to Appellant, “[w]hile a bad-conduct discharge is perhaps expected with an Article 120, UCMJ, offense, it is not for an Article 128, UCMJ, offense.” (Id.) In Appellant’s view, the military judge sentenced him for “an offense that could have been before the court but was not”—presumably a reference to the dismissed Article 120 offenses. (Id.) This Court should be unpersuaded.

To start, there is *no* evidence that suggests the military judge considered the dismissed abusive sexual contact charges in determining Appellant’s sentence, nor does Appellant offer any. (Id.) The word “sexual” was used only once at Appellant’s court-martial—when trial counsel announced the general nature of the charges prior to the entry of pleas. (R. at 8.) The record of proceedings is otherwise devoid of discussion regarding any sexual offenses. Unless this Court assumes the military judge abdicated his responsibilities as the presiding officer of the court-martial, there is no basis for concluding that the military judge sentenced Appellant for anything other than the assaults consummated by battery to which Appellant pled guilty. (App. Br., Appx. at 3.)

By suggesting otherwise, Appellant ignores the reality that a bad-conduct discharge is an authorized punishment for assault consummated by battery in violation of Article 128, UCMJ. Manual for Courts-Martial, United States part IV, para. 77.d.(2)(a) (2019 ed.) (MCM). A bad-conduct discharge may be adjudged for “one who in the discretion of the court warrants severe punishment for bad conduct (even though such bad conduct may not include the commission of serious offenses of a military or civil nature).” Department of the Army Pamphlet (D.A. Pam.)

² Although Appellant claims that “the plea agreement reduced the specifications to assault consummated by battery,” this is inaccurate. (App. Br. at 3.) The specifications to which Appellant pled guilty were always Article 128 offenses. (*See Entry of Judgment*, 23 December 2022, ROT, Vol. 1.)

27-9, *Military Judges' Benchbook*, para. 2-6-9 (29 February 2020). And bad conduct is not limited to sex offenses alone—the mere fact that Appellant “[did] not hav[e] a sex offense among the charges” (App. Br., Appx.at 3) does not somehow mitigate the assaults to which he did plead guilty. Thus, while Appellant may not expect a bad-conduct discharge for his violations of Article 128, that does not mean this Court—or any other sentencing authority—must indulge that expectation.

To the extent Appellant is implying that the bad-conduct discharge is inappropriate in comparison to other sentences for assault consummated by battery, he falls far short of establishing that he is entitled to relief on those grounds. Appellant bears the burden of demonstrating that any cases are “closely related” to his and that the sentences are “highly disparate.” United States v. Lacy, 50 M.J. 286, 288 (C.A.A.F. 1999). He has made no such showing here. Indeed, the fact that Appellant’s offer to plead guilty did not preclude a bad-conduct discharge is a tacit acknowledgment that such punishment would *not* be highly disparate. *See Fields*, 74 M.J. at 626 (finding that a bad-conduct discharge was not inappropriately severe given that the appellant, *inter alia*, voluntarily agreed to a sentence cap that did not preclude a punitive discharge).

Here, the bad-conduct discharge is justified because Appellant had multiple opportunities to make the right choice, and he “chose to assault [IC] and violate [her] trust” each time. (Court Ex. A.) When IC stood up after Appellant began alluding to a romantic relationship, Appellant could have taken the hint and backed off—instead, he chose to grab and pull her by the wrists. When she fell while resisting him, he could have helped her up or left her alone—instead, he chose to hold her down and force his leg between her thighs. And when she left the house to get away from him, he could have kept his hands to himself and apologized for his behavior—

instead, he chose to slap her buttocks. Appellant's callous choices exhibited a conscious disregard for a fellow airman's autonomy and dignity, and he is deserving of severe punishment as a result.

Just as there is no excuse for Appellant's conduct, there is nothing that calls for an even lesser punishment than what was ultimately approved. By the time judgment was entered—53 days after his court-martial—Appellant was long done with his 10-day sentence of confinement. Though the military judge could have reduced Appellant to the lowest enlisted grade, he did not do so—Appellant still wears a higher rank and receives more pay than an Airman Basic who has never assaulted anyone. And in consideration of Appellant's dependent children, the convening authority eliminated the pecuniary penalties from Appellant's sentence, thereby ensuring that Appellant would not suffer any further financial difficulty beyond a reduced paygrade. In many ways, the bad-conduct discharge is the only remaining way to truly punish Appellant for his crimes.

A bad-conduct discharge will ensure “that justice is done and that [Appellant] gets the punishment he deserves.” Joyner, 39 M.J. at 966 (citation omitted). Appellant received far less than the maximum allowable sentence under the plea agreement and his punitive discharge is not inappropriately severe. To grant Appellant relief would not only be an improper exercise of a clemency power that this Court does not have, but also a miscarriage of justice.

WHEREFORE, the United States respectfully requests this Honorable Court affirm Appellant's sentence.

II.

THERE IS NO DUE PROCESS VIOLATION GIVEN THAT THE CONVENING AUTHORITY PROVIDED APPELLANT MORE THAN ENOUGH TIME TO PROVIDE MATTERS IN RESPONSE TO THE VICTIM'S POST-TRIAL SUBMISSIONS.

Additional Facts

After Appellant’s court-martial concluded on 31 October 2022, both he and IC were notified of their right to submit post-trial matters to the convening authority. (*Submission of Matters*, 31 October 2022, ROT, Vol. 2.) The same day, IC provided her written victim impact statement—the same one she had furnished to the court-martial—as her submission to the convening authority. (*IC’s Submission of Matters*, 31 October 2022, ROT, Vol. 2.) IC’s victim impact statement did not contain any specific comments about punishment and only asked that the court-martial hold Appellant accountable. (Court Ex. A.) IC did not submit any additional matters thereafter.

On 3 November 2022, Appellant submitted his matters, in which he requested that the convening authority to “disapprove, reduce, or suspend the reduction in pay grade to E-2, and the forfeitures of \$1,300 pay per month for six months.” (*Submission of Matters on Behalf of Amn Mario D. Moore*, 3 November 2022, ROT, Vol. 2.)

On 10 November 2022, Appellant’s trial defense counsel receipted for IC’s post-trial submission. (*Receipt for Victim Submission of Matters*, 10 November 2022, ROT, Vol. 2.) Appellant did not submit anything in response to IC’s matters.

Twenty-eight days later, on 8 December 2022, the convening authority acted on Appellant’s case after considering both IC and Appellant’s submissions. (*Convening Authority Decision on Action*, 8 December 2022, ROT, Vol. 1).

Standard of Review

Proper completion of post-trial processing is a question of law this Court reviews *de novo*. United States v. Valentin-Andino, 83 M.J. 537, 541 (A.F. Ct. Crim. App. 2023) (citation omitted).

Law

Prior to taking or declining to take action on a case, the convening authority “shall consider matters timely submitted under Rule for Courts-Martial (R.C.M.) 1106 and 1106A, if any, by the accused and crime victim.” R.C.M. 1109(d)(3)(A), R.C.M. 1110(d).

Pursuant to R.C.M.1106A(c)(1), “a crime victim may submit to the convening authority any matters that may reasonably tend to inform the convening authority’s exercise of discretion under R.C.M. 1109 or 1110.” Any matters submitted by a victim must be provided to the accused “as soon as practicable.” R.C.M. 1106A(c)(3). “[T]he accused shall have five days from receipt of those matters to submit any matters in rebuttal,” and must be “limited to addressing matters raised in the crime victim’s submissions.” R.C.M. 1106(d)(3).

An appellant claiming to have been denied a right to comment on post-trial matters bears the burden of making a “colorable showing of possible prejudice.” Valentin-Andino, 83 M.J. at 541 (citing United States v. Brown, 54 M.J. 289, 292 (C.A.A.F. 2000)). To demonstrate prejudice, an appellant must state “what, if anything, would have been submitted to ‘deny, counter, or explain’ the new matter.” United States v. Chatman, 46 M.J. 321, 323 (C.A.A.F. 1997).

Analysis

Relying entirely on the fact that Appellant never personally *received* for IC’s submission of matters, Appellant now contends that the convening authority took action on his case “without allowing [Appellant] an opportunity to respond.”³ (App. Br., Appx. at 7.) But Appellant never claims that he did not get to see IC’s submission or that he wanted to submit anything in rebuttal—that is why his claim fails.

³ Appellant submitted his own matters through his defense counsel—to argue now that service upon him through the very same counsel was insufficient is arbitrary, especially since he cites no authority to support this premise. (*See generally* App. Br., Appendix at 4-7.)

By the time defense counsel receipted for IC's matters, Appellant would either have been serving his last day of confinement or living his first day as a free convict. Thus, it would not have been difficult for Appellant and his counsel to communicate regarding IC's matters within the five-day period allotted under R.C.M. 1106(d)(3). Indeed, Appellant never asserts that his counsel did not share the content of IC's post-trial submission with him. Nor does Appellant assert that he was not provided the requisite amount of time—no doubt because the convening authority waited another 28 days before taking action. Considering the above, it would be reasonable for this Court to conclude that Appellant *did* have an opportunity to examine IC's submission and determine whether he wanted to respond, as required by the Rules for Courts-Martial.

Even assuming *arguendo* that Appellant had not seen IC's post-trial submission, his claim fails because he cannot demonstrate prejudice. Appellant, who was present for the entirety of his court-martial, would have had been privy to IC's victim statement—in other words, he had access to what ultimately ended up being IC's post-trial submission. Given that IC's post-trial submission was a duplicate of the written victim impact statement that she provided to the court-martial during sentencing, there were no “new” matters for Appellant and his counsel to respond to. *Cf. Valentin-Andino*, 83 M.J. at 544 (finding prejudice where part of the victim's submission included new matters, even though four out of six paragraphs were identical to sentencing victim impact statement). And regardless, Appellant has not demonstrated what he would have said to “deny, counter, or explain” the matters in IC's submission—perhaps because there was nothing left to say. *Chatman*, 46 M.J. at 323.

Given that Appellant has failed to establish error, much less make a “colorable showing of possible prejudice,” he is unentitled to relief. *Valentin-Andino*, 83 M.J. at 541.

WHEREFORE, the United States respectfully requests that this Honorable Court affirm the findings and sentence in this case.

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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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 15 March 2024.

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United States Air Force

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

UNITED STATES	)	No. ACM 40423
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL
Mario D. MOORE	)	CHANGE
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 12th day of April, 2024,

ORDERED:

That the record of trial in the above-styled matter is withdrawn from a Special Panel and referred to Panel 3 for appellate review.



FOR THE COURT

FLEMING/E. KEEFE, Capt, USAF
Deputy Clerk of the Court