

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 1
)	
Airman (E-2)	)	No. ACM S32775
DAVID J. PELLEGRINO,)	
United States Air Force	)	14 May 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(1) and (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 **24 July 2024**. This case was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 49 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

TREVOR N. WARD, Capt, 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 14 May 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 (E-2)	)	No. ACM S32775
DAVID J. PELLEGRINO, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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.

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 15 May 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 S32775
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
David J. PELLEGRINO)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 14 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 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 17th day of May, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **24 July 2024**.

Each request will be considered on its merits. Appellant's counsel is advised that any subsequent motions for enlargement of time, shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) 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	)	APPELLANT’S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (SECOND)
)	
v.	)	Before Panel 1
)	
Airman (E-2)	)	No. ACM S32775
DAVID J. PELLEGRINO,)	
United States Air Force	)	16 July 2024
<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 (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 August 2024**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed. Counsel is withdrawing the motion of the same filed 15 July 2024, due to an error in the calculation of days

On 15 December 2023, at a special court-martial convened at McConnell Air Force Base, Kansas, a military judge, consistent with Appellant’s pleas, found Appellant guilty of one charge and one specification of desertion in violation of Article 85, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 885. R. at 6, 108; one charge and two specifications of absence without leave, in violation of Article 86, UCMJ, 10 U.S.C. § 886. R. at 6, 108; one charge and three specifications of insubordinate conduct, in violation of Article 91, UCMJ, 10 U.S.C. § 891. R. at 6, 108; one charge and two specifications of wrongful use and distribution of a controlled substance, in violation of Article 112(a), UCMJ, 10 U.S.C. § 912a. R. at 6, 108; one charge and

one specification of false official statement, in violation of Article 107, UCMJ, 10 U.S.C. § 907. R. at 6, 108; and one charge and one specification of malingering, in violation of Article 83, UCMJ, 10 U.S.C. § 883. R. at 6, 108. On the same day, the military judge sentenced Appellant to be discharged from the Air Force with a bad conduct discharge, confined for 120 days, reduced to E-1, and a reprimand. R. at 124. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. Amn David J. Pellegrino, dated 2 January 2024.

The trial transcript is 124 pages long and the record of trial is comprised of one volume containing three Prosecution Exhibits, one Defense Exhibit, and four Appellate Exhibits. Appellant is not currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information.

The undersigned appellate defense counsel was detailed on 8 July 2024. Counsel is a reservist and began his review upon being detailed to the case, which is also when he began being on orders. He is assigned one additional case, which has priority over the present case.

1. *United States v. Santa Cruz Jr.*, ACM S32769. *United States v. Santa Cruz Jr.* is already on his third enlargement of time to file Assignments of Error. Because of the increased time that *Santa Cruz Jr.* has been pending, it remains a priority over this case.

Therefore, through no fault of Appellant, undersigned counsel has not been able to complete his review of Appellant's case following the 8 July 2024 appointment. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

Appellant was advised of his right to a timely appeal. Appellate counsel has not provided

Appellant with an update of the status of counsel's progress on Appellant's case. Similarly, Appellant was not specifically advised of the request for a second enlargement of time and Appellant has not affirmatively consented to this request for an enlargement of time.

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

Respectfully submitted,

ANTHONY J. GHIOTTO, Lt Col, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 16 July 2024.

Respectfully submitted.

ANTHONY J. GHIOTTO, Lt Col, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 (E-2)	)	No. ACM S32775
DAVID J. PELLEGRINO, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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.

JOCELYN Q. WRIGHT, Maj, 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 July 2024.

JOCELYN Q. WRIGHT, Maj, 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
	)	ENLARGEMENT OF TIME (THIRD)
)	
v.	)	Before Panel 1
)	
Airman (E-2)	)	No. ACM S32775
DAVID J. PELLEGRINO,)	
United States Air Force	)	13 August 2024
<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 (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **23 September 2024**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 15 December 2023, at a special court-martial convened at McConnell Air Force Base, Kansas, a military judge, consistent with Appellant’s pleas, found Appellant guilty of one charge and one specification of desertion in violation of Article 85, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 885. R. at 6, 108; one charge and two specifications of absence without leave, in violation of Article 86, UCMJ, 10 U.S.C. § 886. R. at 6, 108; one charge and three specifications of insubordinate conduct, in violation of Article 91, UCMJ, 10 U.S.C. § 891. R. at 6, 108; one charge and two specifications of wrongful use and distribution of a controlled substance, in violation of Article 112(a), UCMJ, 10 U.S.C. § 912a. R. at 6, 108; one charge and one specification of false official statement, in violation of Article 107, UCMJ, 10 U.S.C. § 907.

R. at 6, 108; and one charge and one specification of malingering, in violation of Article 83, UCMJ, 10 U.S.C. § 883. R. at 6, 108. On the same day, the military judge sentenced Appellant to be discharged from the Air Force with a bad conduct discharge, confined for 120 days, reduced to E-1, and a reprimand. R. at 124. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. Amn David J. Pellegrino, dated 2 January 2024.

The trial transcript is 124 pages long and the record of trial is comprised of one volume containing three Prosecution Exhibits, one Defense Exhibit, and four Appellate Exhibits. Appellant is not currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information.

The undersigned appellate defense counsel was detailed on 8 July 2024. Counsel is a reservist and began his review upon being detailed to the case, which is also when he began being on orders. He is assigned one additional case, which has priority over the present case.

1. *United States v. Santa Cruz Jr.*, ACM S32769. *United States v. Santa Cruz Jr.* is already on his third enlargement of time to file Assignments of Error. Because of the increased time that *Santa Cruz Jr.* has been pending, it remains a priority over this case.

Therefore, through no fault of Appellant, undersigned counsel has not been able to complete his review of Appellant's case following the 8 July 2024 appointment. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

Appellant was advised of his right to a timely appeal. Appellate counsel has not provided Appellant with an update of the status of counsel's progress on Appellant's case. Similarly,

Appellant was not specifically advised of the request for a second enlargement of time and Appellant has not affirmatively consented to this request for an enlargement of time.

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

Respectfully submitted

ANTHONY J. GHIOTTO, Lt Col, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 13 August 2024.

Respectfully submitted

ANTHONY J. GHIOTTO, Lt Col, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 (E-2)	)	No. ACM S32775
DAVID J. PELLEGRINO, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

**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.

JENNY A. LIABENOW, 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 August 2024.

JENNY A. LIABENOW, 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	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND MOTION
	)	TO ATTACH
)	
v.	)	Before Panel 1
)	
Airman (E-2)	)	No. ACM S32775
DAVID J. PELLEGRINO,)	
United States Air Force	)	23 September 2024
<i>Appellant</i>)	

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

Pursuant to Rule 16 of this Honorable Court’s Rules of Practice and Procedure, and Rule for Courts-Martial (R.C.M.) 1115, Appellant hereby moves to withdraw his case from appellate review. Appellant has fully consulted with Lt Col Anthony J. Ghiotto and Capt Trevor N. Ward, his appellate defense counsels, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise to withdraw his case from appellate review.

Further, pursuant to Rules 23(b) and 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel asks this Court to attach the two-page document appended to this pleading to Appellant’s Record of Trial. The appended document is a Department of Defense Form 2330, signed by Appellant and Capt Ward, one of his appellate defense counsels. The appended document is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court’s Rules of Practice and Procedure.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the above captioned motion to withdraw from appellate review and likewise grant his request to attach matters to the record.

Respectfully submitted,

Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 23 September 2024.

Respectfully submitted,

Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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

UNITED STATES	)	No. ACM S32775
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
David J. PELLEGRINO)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 23 September 2024, Appellant submitted a Motion to Withdraw from Appellant Review and Motion to Attach. Specifically, Appellant moved to attach a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, signed by Appellant and Appellant’s counsel on 23 September 2024.

The Government did not submit any opposition.

Accordingly, it is by the court on this 26th day of September 2024,

ORDERED:

Appellant’s Motion to Withdraw from Appellate Review and Motion to Attach are **GRANTED**. Appellant’s case is forwarded to the Appellate Records Branch (JAJM) for further processing in accordance with Rules for Courts-Martial 1115(f)(3) and 1201, *Manual for Courts-Martial, United States* (2024 ed.).



FOR THE COURT

OLGA STANFORD, Capt, USAF
Commissioner