

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. 3
Senior Airman (E-4))	
NATHANIEL E. NAKKEN,	)	No. ACM S32767
United States Air Force,)	
<i>Appellant.</i>	)	23 February 2024

**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, Senior Airman Nathaniel E. Nakken, Appellant, hereby moves for the first enlargement of time to file his assignments of error. Appellant requests an enlargement for a period of 60 days, which will end on **7 May 2024**. The record of trial was docketed with this Court on 8 January 2024. From the date of docketing to the present date, 46 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 Government Trial and Appellate Operations Division on 23 February 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 S32767
NATHANIEL E. NAKKEN, 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 26. February 2024.

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 S32767
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL
Nathaniel E. NAKKEN	)	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 Panel 3 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
GRUEN, PATRICIA A., Colonel, Appellate Military Judge
DOUGLAS, KRISTINE M., Colonel, Appellate Military Judge



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 Special Panel
Senior Airman (E-4))	
NATHANIEL E. NAKKEN,	)	No. ACM S32767
United States Air Force,)	
<i>Appellant.</i>	)	26 April 2024

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman (SrA) Nathaniel E. Nakken, Appellant, hereby moves for a second enlargement of time to file his assignments of error. SrA Nakken requests an enlargement for a period of 30 days, which will end on **6 June 2024**. The record of trial was docketed with this Court on 8 January 2024. From the date of docketing to the present date, 109 days have elapsed. On the date requested, 150 days will have elapsed.

On 31 May 2024, at Offutt Air Force Base, Nebraska, a special court martial comprised of a military judge alone convicted SrA Nakken, consistent with his pleas and pursuant to a plea agreement, of one charge and four specifications of wrongful use, distribution, and introduction of controlled substances in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 91. The military judge sentenced SrA Nakken to five months’ confinement, reduction to E-1, a bad conduct discharge, and a reprimand. R. at 138. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action, 9 July 2023. The convening authority denied SrA Nakken’s request to defer all automatic forfeitures until the date the military judge signed the entry of judgment. *Id.*

SrA Nakken's record of trial consists of three prosecution exhibits, fourteen defense exhibits, and six appellate exhibits. The transcript is 139 pages. SrA Nakken is not currently confined.

Through no fault of SrA Nakken, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors.

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 Government Trial and Appellate Operations Division on 26 April 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 (SECOND)
)	
	)	Before Special Panel
Senior Airman (E-4))	
NATHANIEL E. NAKKEN	)	No. ACM S32767
United States Air Force)	
<i>Appellant.</i>	)	30 April 2024

**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 (Second) 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 30 April 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 S32767
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Nathaniel E. NAKKEN)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 26 April 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Second) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

In this motion, Appellant’s counsel accurately states that the court docketed the record of trial on 8 January 2024. We also note that given the sentencing date of 31 May 2023, 222 days passed from sentencing to the date of docketing.

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 7th day of May, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Second) is **GRANTED**. Appellant shall file any assignments of error not later than **6 June 2024**.

Each request for an enlargement of time 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.

Counsel is not required to re-address item (1) in each subsequent motion for 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
	)	(THIRD)
v.)	
	)	Before Special Panel
Senior Airman (E-4))	
NATHANIEL E. NAKKEN,	)	No. ACM S32767
United States Air Force,)	
<i>Appellant.</i>	)	29 May 2024

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman (SrA) Nathaniel E. Nakken, Appellant, hereby moves for a third enlargement of time to file his assignments of error. SrA Nakken requests an enlargement for a period of 30 days, which will end on **6 July 2024**. The record of trial was docketed with this Court on 8 January 2024. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 31 May 2023, at Offutt Air Force Base, Nebraska, a special court martial comprised of a military judge alone convicted SrA Nakken, consistent with his pleas and pursuant to a plea agreement, of one charge and four specifications of wrongful use, distribution, and introduction of controlled substances in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 91. The military judge sentenced SrA Nakken to five months’ confinement, reduction to E-1, a bad conduct discharge, and a reprimand. R. at 138. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action, 9 July 2023. The convening authority denied SrA Nakken’s request to defer all automatic forfeitures until the date the military judge signed the entry of judgment. *Id.*

SrA Nakken's record of trial consists of three prosecution exhibits, fourteen defense exhibits, and six appellate exhibits. The transcript is 139 pages. SrA Nakken is not currently confined.

Through no fault of SrA Nakken, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors.

SrA Nakken was (1) advised of his right to a timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, (3) advised of this request for an enlargement of time, and (4) agrees with this request for an enlargement of time.

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 Government Trial and Appellate Operations Division on 29 May 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 S32767
NATHANIEL E. NAKKEN, 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.

BRITTANY M. SPEIRS, Maj, USAFR
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 30 May 2024.

BRITTANY M. SPEIRS, Maj, USAFR
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
	)	(FOURTH)
v.)	
	)	Before Special Panel
Senior Airman (E-4))	
NATHANIEL E. NAKKEN,	)	No. ACM S32767
United States Air Force,)	
<i>Appellant.</i>	)	26 June 2024

**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, Senior Airman (SrA) Nathaniel E. Nakken, Appellant, hereby moves for a fourth enlargement of time to file his assignments of error. SrA Nakken requests an enlargement for a period of 30 days, which will end on **5 August 2024**. The record of trial was docketed with this Court on 8 January 2024. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 31 May 2023, at Offutt Air Force Base, Nebraska, a special court martial comprised of a military judge alone convicted SrA Nakken, consistent with his pleas and pursuant to a plea agreement, of one charge and four specifications of wrongful use, distribution, and introduction of controlled substances in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. R. at 91. The military judge sentenced SrA Nakken to five months’ confinement, reduction to E-1, a bad conduct discharge, and a reprimand. R. at 138. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action, 9 July 2023. The convening authority denied SrA Nakken’s request to defer all automatic forfeitures until the date the military judge signed the entry of judgment. *Id.*

SrA Nakken's record of trial consists of 3 prosecution exhibits, 14 defense exhibits, and 6 appellate exhibits. The transcript is 139 pages. SrA Nakken is not confined.

Lieutenant Colonel (Lt Col) Jarett Merk has been detailed to represent SrA Nakken. SrA Nakken's case is Lt Col Merk's first priority before this Court. He has Inactive Duty Training dedicated to this case during the next 30 days.

Major (Maj) Samantha Golseth's priorities are provided below. Maj Golseth separately moved to withdrawal as SrA Nakken's appellate defense counsel with SrA Nakken's consent. Maj Golseth represents 33 clients and is presently assigned 19 cases pending initial brief before this Court. Seven cases currently have priority over the present case:

1. *United States v. Johnson*, No. ACM 40291 (f rev) – The record of trial consists of 5 volumes, 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages and was a fully litigated general court-martial. The appellant is not confined. His case was docketed before this Court on 13 July 2023. Undersigned counsel is reviewing the appellant's record and anticipates filing his assignments of error no later than 8 July 2024.
2. *United States v. Goodwater*, No. ACM 40304 (f rev) – The Government's answer brief is due on 14 July 2024. Undersigned counsel anticipates she will need to file a reply brief no later than 21 July 2024.
3. *United States v. George*, No. ACM 40397 – Due not later than 1 August 2024, before the United States Court of Appeals for the Armed Forces (CAAF), undersigned counsel will file a petition and supplemental brief.
4. *United States v. Trovatore*, No. ACM 40505 – The record of trial consists of 3 volumes, 12 prosecution exhibits, 2 appellate exhibits, and 2 court exhibits. The transcript is 175

- pages and involves guilty pleas to 8 charges and 11 specifications. The appellant is not confined. His case was docketed before this Court on 8 August 2023. Undersigned anticipates filing his assignments of error no later than 2 August 2024.
5. *United States v. Simmons*, No. ACM 40462 (f rev) – The record of trial consists of 2 volumes, 5 prosecution exhibits, 5 defense exhibits, and 9 appellate exhibits. The transcript is 104 pages. The appellant is not confined. His case was docketed before this Court on 15 August 2023.
 6. *United States v. Benoit, Jr.*, No. ACM 40508 – The record of trial consists of 6 volumes, 11 prosecution exhibits, 12 defense exhibits, 58 appellate exhibits, and 2 court exhibits. The transcript is 678 pages and was a fully litigated general court-martial which involves the death of a servicemember. The appellant is not confined. His case was docketed before this Court on 15 August 2023.
 7. *United States v. Casillas*, No. ACM 40551 – The record of trial consists of 19 prosecution exhibits, 4 defense exhibits, and 65 appellate exhibits. The transcript is 1627 pages and was a fully litigated general court-martial. The appellant is confined. His case was docketed before this Court on 14 December 2023.

During the requested enlargement of time, in addition to the above priorities, Maj Golseth will also begin drafting a petition and supplemental brief for *United States v. Donley*, No. ACM 40350 (f rev).

Through no fault of SrA Nakken, Maj Golseth has been working on other assigned matters, Lt Col Merk was recently detailed, and neither counsel have yet to complete their review. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors.

SrA Nakken was (1) advised of his right to a timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, (3) advised of this request for an enlargement of time, and (4) agrees with this request for an enlargement of time.

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

Respectfully submitted,

JARETT MERK, Lt Col, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 Government Trial and Appellate Operations Division on 26 June 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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 S32767
NATHANIEL E. NAKKEN, 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.

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 28 June 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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR WITHDRAWAL OF
<i>Appellee,</i>	)	APPELLATE DEFENSE COUNSEL
)	
v.	)	Before Special Panel
)	
Senior Airman (E-4)	)	No. ACM S32767
NATHANIEL E. NAKKEN,)	
United States Air Force,	)	26 June 2024
<i>Appellant.</i>)	

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. Lieutenant Colonel (Lt Col) Jarett Merk has been detailed substitute counsel in undersigned counsel’s stead and provided notice of appearance in Appellant’s Motion for Enlargement of Time (Fourth), filed on 26 June 2024. A thorough turnover of the record between counsel has been completed. Lt Col Merk is able to review Appellant’s record of trial much sooner than undersigned counsel. SrA Nakken’s case is Lt Col Merk’s first priority and undersigned counsel’s eighth priority.

Appellant has been advised of this motion to withdraw as counsel and consents to undersigned counsel’s withdrawal. A copy of this motion will be delivered to Appellant following its filing.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 June 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MERITS BRIEF
<i>Appellee,</i>)	
)	
v.	)	Before Special Panel
)	
Senior Airman (E-4),	)	No. ACM S32767
NATHANIEL R. NAKKEN,)	
United States Air Force,	)	31 July 2024
<i>Appellant.</i>)	

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

The undersigned appellate defense counsel attests he has on behalf of SrA Nathaniel R. Nakken, Appellant, carefully examined the record of trial in this case. Appellant does not admit the findings and sentence are correct in law and fact but submits the case to this Honorable Court on its merits with no specific assignments of error.

Respectfully submitted,

JAR Lt Col, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

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

UNITED STATES	)	No. ACM S32767
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Nathaniel E. NAKKEN)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 31 May 2023, Appellant was tried by a special court-martial at Offutt Air Force Base, Nebraska. In accordance with his pleas, and pursuant to a plea agreement, a military judge found Appellant guilty of one specification of wrongful use of Lysergic Acid Diethylamide (LSD), two specifications of wrongful distribution of LSD, and one specification of wrongful introduction of LSD, all in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a.¹ The military judge sentenced Appellant to a bad conduct discharge, confinement for 5 months, reduction to the grade of E-1, and a reprimand.

On 31 July 2024, Appellant submitted his case on its merits with no specific assignments of error. Upon this court’s review of the record, we discovered the audio recording for the Preliminary Hearing missing.² We also found the audio

¹ All references in this order to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.).

² We recognize a preliminary hearing officer’s (PHO) report under Article 32, UCMJ, 10 U.S.C. § 832, including its attachments, is not required content of a record of trial under R.C.M. 1112(b). However, under R.C.M. 1112(f)(1)(A), the PHO report is among those items the United States is required to attach to the record of trial if not used as an exhibit during the trial. We note the PHO report is attached to the record of trial, excluding the audio recording capturing the hearing. We further note that pursuant to Appellant’s plea agreement, the 20 October 2022 charges, which were originally referred to a general court-martial, were re-referred to a special court-martial, possibly making the requirement for an Article 32, UCMJ, hearing moot. We do not find the record of trial is incomplete due to the absence of this audio recording given the specific circumstances of this case.

recording for the portions of trial covering initial proceedings up to the beginning of the *Care* inquiry missing. The court is concerned with the omission of this latter recording.

“A substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the Government must rebut.” *United States v. Henry*, 53 M.J. 108, 111 (C.A.A.F. 2000) (citations omitted). “Insubstantial omissions from a record of trial do not raise a presumption of prejudice or affect that record’s characterization as a complete one.” *Id.* “Whether an omission from a record of trial is ‘substantial’ is a question of law which [appellate courts] review *de novo*.” *United States v. Stoffer*, 53 M.J. 26, 27 (C.A.A.F. 2000). Each case is analyzed individually to decide whether an omission is substantial. *United States v. Abrams*, 50 M.J. 361, 363 (C.A.A.F. 1999).

The contents of a record of trial shall include “[a] substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting” and “a copy of the convening order and any amending order.” Rule for Courts-Martial (R.C.M.) 1112(b)(1), (3). “Court-martial proceedings may be recorded by videotape, audiotape, or other technology from which sound images may be reproduced to accurately depict the court-martial.” R.C.M. 1112(a).

If a record is incomplete or defective a court reporter or any party may raise the matter to the military judge for appropriate corrective action. A record of trial found to be incomplete or defective before or after certification may be corrected to make it accurate. A superior competent authority may return a record of trial to the military judge for correction under this rule.

R.C.M. 1112(d)(2).

Accordingly, it is by the court on this 23d day of August, 2024,

ORDERED:

Not later than 16 September 2024, counsel for the Government shall **SHOW GOOD CAUSE** as to why this court should not remand the record for correction under Rule for Courts-Martial 1112(d), or take corrective action.



FOR THE COURT

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee</i>	)	UNITED STATES' ANSWER TO
	)	SHOW CAUSE ORDER
v.)	
	)	Before Special Panel
Senior Airman (E-4))	
NATHANIEL E. NAKKEN, USAF	)	No. ACM S32767
<i>Appellant</i>)	
	)	16 September 2024

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

The United States provides this answer to this Court's 23 August 2024 Order to Show Cause. For the reasons set forth below, this Court should not remand the record for correction under Rule for Courts-Martial (R.C.M.) 1112(d).

STATEMENT OF THE CASE

On 31 July 2024, Appellant submitted a merits brief without specific assignments of error. (App. Merits Br. at 1.) This Court reviewed the Record of Trial (ROT) and found that the audio recording of the Preliminary Hearing and the portion of the trial from initial proceedings to the beginning of the Care inquiry were missing. This Court was only "concerned with the omission of th[e] latter recording." (*Order*, dated 23 August 2022.)

On 23 August 2024, this Court directed the following: "[n]ot later than 16 September 2024, counsel for the Government shall **SHOW GOOD CAUSE** as to why this court should not remand the record for correction under R.C.M. 1112(d), or take corrective action." *Id.*

STATEMENT OF FACTS

The undersigned counsel inspected the Court's copy of the ROT on 6 September 2024. Audio for the trial is contained on two discs. (ROT, Vol 1). One disc labeled 3 April 2023

contains Appellant's arraignment. (R. at 1-18.) The second disc is labeled 31 May 23. It contains one file folder labeled "Music" and one stand-alone MP3 file labeled "0723."

"Music" contains seven MP3 files. The first MP3 file is labeled "0846" (additional alpha-numerical sequence omitted). This audio covers initial proceedings beginning at 0846 on 31 May 2023. (R. at 19.) The audio covers the military judge's advisement of Appellant's rights in the special court-martial (R. at 22-23), his forum selection (R. at 25-29), completion of a second arraignment (R. at 29-30), and Appellant's guilty plea (R. at 31). The remaining six audio files cover the rest of the record. (R. at 46-139.) Appellant Government's ROT contains a disc with identical files.

The MP3 file labeled "0723" is a duplicate copy of the audio covering Appellant's Care inquiry through the military judge's findings. (R. at 46-91.)

Standard of Review

Whether the record of trial is incomplete is a question of law that the Court reviews de novo. United States v. Henry, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law and Argument

The contents of a record of trial shall include "[a] substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting." RCM 1112(b)(1). "Court-martial proceedings may be recorded by videotape, audiotape, or other technology from which sound images may be reproduced to accurately depict the court-martial." R.C.M. 1112(a).

Since both the written verbatim transcript and the complete set of audio recordings are present within the ROT, the ROT is not incomplete under R.C.M. 1112(b). While the audio files

containing the portions of the trial from 31 May 2024 were erroneously labeled as “Music,” they are still present and accessible within the ROT.

Appellant has an accurate record of his court-martial, and this Court should not remand the record for correction under R.C.M. 1112(d).

WHEREFORE, the United States respectfully requests this Court decline to remand the record for correction.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 16 September 2024.

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