

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	NOTICE OF DIRECT APPEAL
	)	PURSUANT TO ARTICLE
<i>Appellee</i>	)	66(b)(1)(A)
)	
v.)	
)	
Technical Sergeant (E-6)	)	No. ACM _____
CLINT C. SCOTT)	
United States Air Force	)	22 June 2023
<i>Appellant</i>)	

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

On 8 June 2022, at Davis-Monthan Air Force Base, a military judge sitting at a special court-martial convicted Technical Sergeant (TSgt) Scott, in accordance with his pleas and plea agreement, of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge and two specifications of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge and specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928.¹ Record of Trial (ROT), Vol. 1, *Entry of Judgment*, dated 10 August 2022. Members sentenced TSgt Scott to 180 days confinement, reduction to the grade of E-5, and \$3704.00 of forfeitures per month for six months. *Id.*

¹ Various specifications were withdrawn and dismissed.

On 27 March 2023, the Government sent TSgt Scott the required notice by mail of his right to appeal within 90 days. Pursuant to Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A) (2022), TSgt Scott files his notice of direct appeal with this Court.

Respectfully submitted,

SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
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 22 June 2023.

Respectfully submitted,

SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

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

UNITED STATES	)	No. ACM 40369
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF DOCKETING
Clint C. SCOTT)	
Technical Sergeant (E-6))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

A notice of direct appeal pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A), was submitted by Appellant and received by this court in the above-styled case on 22 June 2023. On 22 June 2023, the record of trial was received by the Military Appellate Records Branch.

Accordingly, it is by the court on this 22d day of June, 2023,

ORDERED:

The case in the above-styled matter is referred to Panel 2. Briefs will be filed in accordance with Rule 18 of the Joint Rules of Appellate Procedure and Rule 23.3(m) of this court's Rules of Practice and Procedure. *See* JT. CT. CRIM. APP. R. 18, A.F. Ct. Crim. App. R. 23.3(m).



FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIRST)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	12 August 2023
)	
<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 **20 October 2023**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 51 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,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 12 August 2023.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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.

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 14 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,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	12 October 2023
)	
<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 (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **19 November 2023**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started a review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 12 October 2023.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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.

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 16 October 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,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (THIRD)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	9 November 2023
)	
<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 (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **19 December 2023**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started a review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 9 November 2023.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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.

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 14 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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	12 December 2023
)	
<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 his fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 January 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Counsel has one pending CAAF petition and supplement. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Eight Air Force Court cases have priority over the present case:

1. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Counsel has reviewed the allied papers, all unsealed exhibits, and has started reviewing the transcript.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits.

The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Ellis*, No. ACM 40430 – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.¹ R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 640 days, to be discharged from the service with a bad conduct service characterization. *Id.*; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant’s requests for deferments. ROT, Vol. 1, Convening Authority Decision on

¹ Various charges and specifications were withdrawn and dismissed with prejudice.

Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

7. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three

prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

8. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 12 December 2023.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIFTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	11 January 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 his fifth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 February 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Counsel has four cases pending CAAF Petitions and Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Eight Air Force Court cases have priority over the present case:

1. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Except for sealed materials, Counsel has finished his review of this case. Counsel filed a motion to view sealed materials on 3 January 2024 which was granted. In his last EOT motion on 3 January 2024,

which was also granted, Counsel forecasted to this Court that he does not anticipate needing another EOT unless unforeseen circumstances arise.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant’s request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant’s request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant’s clemency submission to include a request for deferment and waiver of automatic forfeitures, which he

denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Ellis*, No. ACM 40430 – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.¹ R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 640 days, to be discharged from the service with a bad conduct service

¹ Various charges and specifications were withdrawn and dismissed with prejudice.

characterization. *Id.*; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant's requests for deferments. ROT, Vol. 1, Convening Authority Decision on Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

7. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening

Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

8. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 11 January 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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.

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 January 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	8 February 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 his sixth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 March 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined.

Appellate counsel is currently assigned 23 cases; 12 cases are pending initial AOE's before this Court. Counsel has one pending Supreme Court Reply Brief (Answer due to Court and Counsel on 20 February 2024) and four pending CAAF Petitions and Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Seven Air Force Court cases have priority over the present case:

1. *United States v. Ellis*, No. ACM 40430¹ – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.² R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 640 days, to be discharged from the service with a bad conduct service

¹ On 29 January 2024, this Court (Panel 1) approved Appellant's request for EOT 9. Without prior notice and without any status conferences, this Court said, "Given the nature of the case and the number of enlargements granted thus far, the court is not willing to grant any further enlargements of time absent exceptional circumstances." As such, Counsel has changed the prioritization of this guilty plea case over the two cases docketed before this case.

² Various charges and specifications were withdrawn and dismissed with prejudice.

characterization. *Id.*; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant's requests for deferments. ROT, Vol. 1, Convening Authority Decision on Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is currently confined. Counsel will begin his review of this case on Monday, 12 February 2024. Contemporaneous with this request, counsel filed a 116-page AOE in *United States v. Ramirez*, No. ACM 40373. Counsel is on leave on Friday, 9 February 2024.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas,

convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b,

UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

7. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge,

one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 8 February 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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.

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 8 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 40369
Appellee)	
)	
v.)	
	)	ORDER
Clint C. SCOTT)	
Technical Sergeant (E-6))	
U.S. Air Force)	
Appellant	)	Panel 1

On 8 February 2024 counsel for Appellant submitted a Motion for Enlargement of Time (Sixth) 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 9th day of February, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Sixth) is **GRANTED**. Appellant shall file any assignments of error not later than **18 March 2024**.

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,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SEVENTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	7 March 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 his seventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 April 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 259 days have elapsed. On the date requested, 300 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined.

Appellate counsel is currently assigned 22 cases; 11 cases are pending initial AOE's before this Court. Counsel has one pending CAAF Petition and three Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Six Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense

exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed the charging documents (Vol. 1) and the exhibits (Vols. 2-5).

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

6. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted

Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Operations Division on 7 March 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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 opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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 a year long delay practically ensures this Court will not be able to issue a decision that complies with out 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 begun 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.

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 8 March 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (EIGHTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	5 April 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 his eighth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 May 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 288 days have elapsed. On the date requested, 330 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined.

Appellate counsel is currently assigned 21 cases; 10 cases are pending initial AOE's before this Court. Counsel has two pending CAAF Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Six Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense

exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed the entire ROT, except for sealed materials, and has reviewed 700 pages of the 1448-page transcript

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant’s clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT

consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

6. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Operations Division on 5 April 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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 opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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 a year long delay practically ensures this Court will not be able to issue a decision that complies with out 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 begun 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.

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 8 April 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 40369
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Clint C. SCOTT)	
Technical Sergeant (E-6))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 5 April 2024, 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 9th day of April, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **17 May 2024**.

Appellant’s counsel is advised that given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time.



FOR THE COURT

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (NINTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	8 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)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his ninth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 June 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 321 days have elapsed. On the date requested, 360 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; 10 cases are pending initial AOE's before this Court. Counsel has one pending CAAF Supplement that is due in late May. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Six Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense

exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has finished drafting the AOE, is currently editing, and is working with the client on *Grostefon* matters. Counsel intends to file the AOE on Monday, 13 May.

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant’s clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has reviewed the entire ROT and is drafting the AOE. Barring unforeseen circumstances, Counsel intends to file the AOE on or before the current deadline of 26 May 2024.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT

consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

6. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Operations Division on 8 May 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

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.)	
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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 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 started 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.

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 10 May 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (TENTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	4 June 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 his tenth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 July 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 348 days have elapsed. On the date requested, 390 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; seven cases are pending initial AOE's before this Court. Counsel has no pending CAAF petitions or supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. That is, Counsel's caseload has prevented him from reaching and finishing Appellant's case sooner. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time.

Since his last extension of time, Counsel has:

1. Drafted and filed an eight-issue, 50-page AOE in *United States v. Serjak*, No. ACM 40392
2. Reviewed, drafted, and filed a four-issue, 16-page AOE in *United States v. Van Velson*, No. ACM 40401
3. Reviewed, drafted, and filed a Merits Brief with one *Grostefon* issue in *United States v. Wood*, No. ACM 40429
4. Drafted a two-issue, 30-page CAAF Supplement in *United States v. Aguirre*, No. 24-0146/AF, 2024 CAAF LEXIS 263 (C.A.A.F. May 9, 2024) for submission on 29 May 2024
5. Reviewed the entire record in *United States v. Block*, No. ACM 40466 (except for sealed materials as explained below)
6. Reviewed the entire record in *United States v. Hollenback*, No. ACM 40481
7. Prepared for and participated in two moots as a judge

Three Air Force Court cases have priority over the present case:

1. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has reviewed the entire case file and attempted to review sealed materials on 3 June 2024. However, the sealed materials were password protected and neither this Court nor JAJM had the password. But for reviewing the sealed materials, Counsel has finished this case.

2. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three

prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is not confined. Counsel has reviewed the entire case file, including sealed materials. Counsel is working the AOE.

3. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has reviewed the entire record of trial and has reviewed one quarter of the transcript of proceedings.

Given this Court's order on 9 April 2024 stating that "given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time" counsel states the following: First, as noted above, Counsel has been unable to finish this case earlier because of his prior caseload for the past year. Second, Counsel is actively reviewing *Lawson* and will review this case as soon as *Lawson* is finished. Third, Counsel is on leave from . Fourth, Counsel is unable to state when he will start and finish his review of this case until he identifies all issues in *Lawson* and discusses them with that client. However, Counsel is optimistic that he will at least start his review of this case in the next 30 days.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Operations Division on 4 June 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

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.)	
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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 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 over 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 390 days in length. Appellant's over a 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 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not started 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.

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 6 June 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (ELEVENTH)
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6),	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force,	)	3 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 his eleventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **15 August 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 377 days have elapsed. On the date requested, 420 days will have elapsed.

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence:

- 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months;

2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022.

The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, one court exhibit, and a 325-page transcript. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; four cases are pending initial AOE's before this Court. Counsel has two pending CAAF Grant Briefs that are due on 8 and 15 July. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not finished his review of Appellant's case. That is, Counsel's caseload has prevented him from finishing Appellant's case. Counsel has reviewed the entire record except for the transcript of proceedings. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. No Air Force Court cases have priority over the present case.

Since his last extension of time, Counsel has, *inter alia*:

1. Drafted a one-issue, 37-page CAAF Grant Brief and compiled a 148-page Joint Appendix in *United States v. Saul*, No. 24-0098/AF, 2024 CAAF LEXIS 308 (C.A.A.F. June 6, 2024)
2. Reviewed the Government's Answer, drafted and filed a one-issue, four-page Reply in *United States v. Serjak*, No. ACM 40392
3. Reviewed the Government's Answer, drafted, and filed a one issue, four-page Reply in *United States v. Van Velson*, No. ACM 40401
4. Filed a Merits Brief with one *Grostefon* issue in *United States v. Block*, No. ACM 40466
5. Filed a Merits Brief with one *Grostefon* issue in *United States v. Hollenback*, No. ACM 40481
6. Filed a Merits Brief with two *Grostefon* issues in *United States v. Lawson*, No. ACM 23034

Given this Court's order on 9 April 2024 stating that "given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time" counsel states the following: First, as noted above, Counsel has been unable to finish this case earlier because of his prior caseload for the past year. Second, Counsel is actively reviewing this case in conjunction with the drafting of his CAAF Grant Brief due on 15 July. Barring unforeseen, exceptional circumstances, Counsel will not be requesting another extension of time.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Operations Division on 3 July 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

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.)	
)	
Technical Sergeant (E-6)	)	ACM 40369
CLINT C. SCOTT, 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 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 over 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 420 days in length. Appellant's over a 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 4 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.

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 9 July 2024.

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	)	BRIEF ON BEHALF OF
<i>Appellee,</i>	)	APPELLANT
)	
v.	)	Before Panel 1
)	
Technical Sergeant (E-6)	)	No. ACM 40369
CLINT C. SCOTT,)	
United States Air Force	)	30 July 2024
<i>Appellant</i>)	

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

ASSIGNMENTS OF ERROR

I.

**WHETHER TECHNICAL SERGEANT SCOTT’S REDUCTION IN RANK
IS INAPPROPRIATELY SEVERE.**

II.

**WHETHER, AS APPLIED TO TECHNICAL SERGEANT SCOTT,
18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE
GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS
POSSESSION OF FIREARMS IS “CONSISTENT WITH THE NATION’S
HISTORICAL TRADITION OF FIREARM REGULATION.”¹**

Statement of the Case

On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Technical Sergeant (TSgt) Scott of one specification of communicating a threat, in violation of Article 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 915; three specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and .² R. at 32. Members sentenced TSgt Scott to be reduced to the grade

¹ *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022).

² Unless otherwise noted, all references to the UCMJ, the Military Rules of Evidence, and the Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.).

of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures., *Convening Authority Decision on Action.*

Statement of Facts

TSgt Scott, a servicemember with nineteen-and-a-half-years of service and four deployments to Afghanistan, pled guilty to threatening and assaulting B.Z. and assaulting N.R., both of whom were co-workers. R. at 19, 48, 257, 261. TSgt Scott apologized to both. R. at 264. The misconduct stems from two separate nights when TSgt Scott and the victims were drinking at a bar; it was after “stand[ing] up the largest tactical parachute program in the entire Air Force with no facilities and just a blank check.” R. at 262. When TSgt Scott was standing up the unit, his friend and supervisor—Master Sergeant K —died by suicide. R. at 244. This was “something [TSgt Scott] wasn't expecting” and it was a “huge loss” for him. R. at 263.

1. TSgt Scott was “Hand-Picked to Come Help Stand the Unit Up”

TSgt Scott is a parachute rigger which means he packs parachutes and maintains equipment that is used for pararescue personnel (PJ's) when they jump out of planes. R. at 242. This job is crucial because “you are taking a violent parachute opening from 140 miles per hour to about two to three miles an hour and their rate of descent in in [sic] a matter of seconds.” R. at 253. A consequence of improperly packing a parachute is “death or injury.” R. at 211.

Prior to coming to the unit in question TSgt Scott was assigned to the Rescue Flight doing rescue jump master courses. R. at 261-62. “Jump master duties are, when they are checking the door, when they are clearing the rear, they put their whole body out to ensure that the . . . rear

is good, to make sure they are on the designated drop zone or the PI that they are looking for. Then they come in and tell the jumpers to stand by and go.” R. at 246. While conducting this course, TSgt Scott “identified a lot of flaws with their parachute program.” R. at 262. Identification of some of these errors led to “a mad dash and repack [of] a lot of parachutes on the spot.” *Id.*

During his time at the jump master course, TSgt Scott received orders to his new, current unit. R. at 262. When he asked his assignment office why he was being moved, they responded, “[T]his is a brand new unit . . . you are a subject matter expert in the field of parachute rigging. You are the guy that we need over there to ensure that something like this, that just happened at this Rescue Jump Master course, does not ever happen again.” *Id.* In other words, TSgt Scott was “hand-picked to help stand the unit up” because he had “the technical expertise.” R. at 243.

2. Four Jobs, “Zero Malfunctions,” and a Suicide

Master Sergeant K was the person who “recruited” TSgt Scott to “build the unit.” *Id.* TSgt Scott was “very close to Master Sergeant K . . .” R. at 243. When TSgt Scott started working, he was “pretty much doing four jobs.” R. at 245. He was the Aircrew Flight Equipment (AFE) superintendent, the Quality Assurance (QA) Quality Control (QC), the lead trainer, and then had “all those functions you would read in the AFI 301.” *Id.* TSgt Scott was “overseeing all of that. And it was like, he was back and forth, back and forth, all over the map with trying to hold everything together because the qualifications, he was the only one who met the majority of the qualifications.” R. at 246.

During TSgt Scott’s first two years, his unit had “zero malfunctions.” R. at 252. This achievement was with no facilities, virtually no qualified personnel except for TSgt Scott, and no place to store parachutes. R. at 252, 254. While he was doing his four jobs, “the most experience at one time that was on the floor . . . was Tech Sergeant Scott.” *Id.* TSgt Scott knew “what to look

for and how to look for it.” *Id.* After TSgt Scott’s time, the unit had to have a safety stand down because the unit had five malfunctions in just a few months. *Id.* It was because the unit “lost all of [its] experience at one time,”—TSgt Scott. *Id.*

Unfortunately, just four days before the unit “had new inbounds coming in,” while TSgt Scott was working his four jobs, MSgt K died by suicide. R. at 263. TSgt Scott felt it was his duty to volunteer to be the Family Assistance Representative (FAR) because—in his own words—it was “the last thing I owed my friend, my supervisor . . . to make sure I saw him laid to rest properly.” R. at 263.

Shortly after laying Master Sergeant K to rest, TSgt Scott met N.R. when he joined the unit. *Id.* N.R. and the people who came in to the unit with him had “zero pre-meditated experience. So, the ability to train those people up to get them to write, in order to pack the life support equipment, it is kind of hard, it was challenging.” R. at 245.

Because of Master Sergeant K’s death, TSgt Scott “seemed like he was trying to hold on. It seemed like he needed some space.” R. at 244. But, “the mission was not going to stop.” *Id.* So, colleagues tried to support TSgt Scott as best as they could. *Id.* This was “very challenging at the time” personally and professionally. R. at 245.

3. N.R. and his Unpunished Misconduct at Jammers Bar

In 2018, TSgt Scott and N.R., nearly a year into his new unit, were TDY and went to a bar called Jammers to have drinks. R. at 34. N.R. became extremely intoxicated. *Id.* He went to the bathroom, urinated all over the men’s restroom, and filmed himself doing so. *Id.* N.R. urinated on the walls, the toilet, the floor, the sink, the mirror, and in a jar that held condoms. R. at 231-32, 251. N.R. sent the video of himself urinating to other people. R. at 231. The patrons of the bar became angry and began looking for N.R. R. at 232.

Upon learning about N.R.'s behavior, TSgt Scott went outside to find N.R. R. at 34. N.R. was "put into the passenger seat" of a stationary truck. *Id.* N.R. starting yelling obscenities out the window, and TSgt Scott told him to "shut his mouth." *Id.* N.R. responded to TSgt Scott by saying, "Fuck the family," referring to their unit. *Id.* At this point, TSgt Scott stood on the step side of the truck and put N.R. "in like a headlock." *Id.* Another member of the unit got involved, and TSgt Scott let N.R. go. *Id.*

This situation was brought to leadership's attention, and it was considered resolved in 2018. R. at 234.

4. They Came to Sergeant Scott and Said, "Can You Guys Provide a Summit?"

One of the needs of the Air Force in 2018 was for the Air Force to have its own training school for parachuting. R. at 250. The Air Force asked TSgt Scott, "Can you guys provide a summit? We need to know what it is we need to train our guys on for the ST and the GA communities." *Id.*

TSgt Scott had been writing, and is now the co-author of, the "AFE Special Warfare Parachute Rigger School Syllabus." R. at 257. It had to be briefed to, and approved by, Headquarters Air Force. *Id.* It is a requirement for the special operations parachute rigging career field. R. at 258. TSgt Scott was able to write the syllabus because he "spent a lot of [his] spare time and free time in the [technical orders], calling up to headquarters, being the one, requesting to be in specific meetings when it was in regards to anything parachute related." *Id.* Being the co-author of the Air Combatant Command rigger syllabus was the highlight of TSgt Scott's career. R. at 257.

5. "Sergeant Scott was one of the Pioneers" of Fixing a Parachute Flaw

In 2019, an Air Force Special Operations Command (AFSOC) parachutist died because of

a premature activation of his reserve parachute. R. at 246-47. When that happened, AFSOC ordered a stand down, and they wanted to know what happened. R. at 247. “AFSOC called two people”: TSgt Scott and his boss. *Id.* When they spoke with TSgt Scott, they asked him, “‘How do we fix’ the design flaw of the reserve parachute?” R. at 247. TSgt Scott was already aware of a product that fixed the defect, but that the Air Force had previously refused to adopt. R. at 248. The problem was originally fixed in 2014 after a Navy seal had died. *Id.*

TSgt Scott was the person who submitted a form to get the product approved. He was “one of the pioneers on that.” *Id.* AFSOC ended up buying 1,000 of the systems to fix the defect and they have not had “a premature activation since.” *Id.* The fix has since been adopted across the Department of Defense (DOD). Def. Ex. R.

6. B.Z. and the Arizona Brewhouse

In the spring of 2021, B.Z. and TSgt Scott attended the going away of N.R. at the Arizona Brewhouse. R. at 201. TSgt Scott became intoxicated. R. at 30. While sitting at the same table as B.Z., TSgt Scott reached across the table and B.Z. “jokingly acted as if she was going to bite” TSgt Scott. R. at 26. TSgt Scott then told B.Z. that he would “punch her pigtailed off.” *Id.* TSgt Scott was not joking. *Id.* B.Z. asked TSgt Scott if that was “a threat,” and he responded, “it is a promise.” R. at 27.

Either before or after these statements, TSgt Scott was walking past B.Z. and he pushed her shoulder. R. at 52. The push was hard enough that B.Z. fell into a chair. *Id.* At some point, TSgt Scott also put his finger on B.Z.’s forehead. *Id.* TSgt Scott is unsure why he did this to B.Z., but thinks it may have been because they were arguing earlier in the evening. R. at 54.

At another unknown point in the evening, TSgt Scott was again walking past B.Z. This time TSgt Scott put his arm out “in some sort of way to bar her passing” and his “open hand made

contact with her upper torso.” R. at 57. B.Z. told TSgt Scott that he touched her breast, so he “immediately apologized.” *Id.* B.Z. reported this to both her and TSgt Scott’s supervisor. R. at 250. The supervisor asked B.Z. if TSgt Scott touched her breast, and he recalls B.Z.’s response as “[m]aybe the fingers on the back hand.” R. at 250.

7. The Reserve Rip Cord and the Oxygen Pouch: “The Air Force has Completely Gone to it”

In 2020, there was an accident with a special forces PJ that had to do with a design flaw in his parachute. R. at 248. PJ’s must have oxygen on their parachute, but the accident was, in part, because of the location of the oxygen. *Id.* So, TSgt Scott and his boss said, “we are going to design this pouch to take the oxygen equipment, move it to the other side so the parachutist has a free, unobstructed clear path” to deploy his parachute. *Id.* TSgt Scott and his boss designed an “ambidextrous solution” to the problem and “the Air Force has completely gone to it.” R. at 249. This “left side O2 pouch” ensures “jumper safety during deployment. Def. Ex. R.

Another problem that the PJs’ parachute has is the reserve rip cord. *Id.* The reserve rip cord can rub in the incorrect location and cause “dual deployment canopy,” which is dangerous for the parachutist. *Id.* There have been “noted deaths for that problem” so TSgt Scott and his boss worked on “that reserve rip cord as well.” *Id.* At the time of his trial, TSgt Scott’s unit was one of three units in the Air Force using TSgt Scott’s new idea during an “evaluation period.” R. at 250. “Once this user evaluation period goes through, they are going to release it to the entire DOD.” *Id.*

Argument

I.

TECHNICAL SERGEANT SCOTT’S REDUCTION IN RANK IS INAPPROPRIATELY SEVERE.

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 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.” Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2024 *MCM*). 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) (citing *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Rangel*, 64 M.J. 678, 686 (A.F. Ct. Crim. App. 2007), *aff’d*, 65 M.J. 310 (C.A.A.F. 2008)). An accused’s decision to agree to the terms of a plea agreement is but *one* factor to consider, and it “does not mean [the Court] surrender[s] to the parties or military judge [its] duty to determine sentence appropriateness” when considering all the circumstances of a case. *United States v. Williams*, No. 202300217, 2024 CCA LEXIS 111, at *6 (N.M. Ct. Crim. App. Mar. 15, 2024) (unpublished).

“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) (citing *United States v. Boone*, 49 M.J. 187, 194 (1998); *United States v. Lanford*, 20 C.M.R. 87, 94-95 (C.M.A. 1955)). 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

TSgt Scott respectfully requests that this Court find that his reduction in rank is inappropriately severe when considered alongside the other punishments he was given, the

seriousness of the offenses he was convicted of, his record of service, and the circumstances surrounding the offenses.

1. “All the Circumstances of the Case” and the “Nature and Seriousness of the Offenses”

It is apparent what happened in this case: The Air Force “hand-picked” TSgt Scott to stand up a no-fail unit because of his expertise. Then, the Air Force failed to give him a facility, trained personnel, and the resources he needed to do his “four jobs” where “death or injury” are on the line every single day. R. at 211, 245. A 2019 Manpower study showed that TSgt Scott's shop should have had 29 people, but TSgt Scott only did it with nine. Def. Ex. R. If that was not bad enough, TSgt Scott's supervisor, a member of his “family” died by suicide only four days before a group of untrained personnel arrived in the unit. R. at 34. A group of personnel that TSgt Scott now had to in-process while his was being the Family Assistance Representative to Master Sergeant K [redacted]'s family.

Against this backdrop of overwork and high stress, it is understandable why TSgt Scott would put N.R. into a headlock after making a fool of himself in front of the public and when he told TSgt Scott, “Fuck the family.” *Id.* Master Sergeant K [redacted]'s death was still raw and fresh in TSgt Scott's mind. These matters in mitigation should have “lessen[ed] the punishment to be adjudged by the court-martial.” R.C.M. 1001(c)(2)(C). While the conduct with B.Z. was further away in time from Master Sergeant K [redacted]'s suicide, undoubtedly the memory of it and the job stress was still something TSgt Scott was dealing with. As SSgt J [redacted] M [redacted] said:

When our shop suffered a great loss in the death of a great friend and mentor MSgt E [redacted] K [redacted], that became a moment in time which brought Sergeant Scott and I even close together . . . he went above and beyond to help build the AFE shop from absolutely nothing to what it is today.

Def. Ex. O. TSgt did the best he could do, even though he slipped up along the way.

Although not an excuse for his actions, this Court should consider that TSgt Scott's crimes

were Article 15 level misconduct—what amounts to two bar altercations—one of which was considered resolved by leadership in 2018. By way of comparison, N.R. received no punishment for his service discrediting conduct that undoubtedly damaged the reputation of the service more than TSgt Scott’s misconduct. R. at 232, 234. As the Court of Military Appeals noted almost 40 years ago: “[T]he experienced and professional military lawyers who find themselves appointed as trial judges and judges on the courts of military review have a solid feel for the range of punishments typically meted out in courts-martial.” *United States v. Ballard*, 20 M.J. 282, 286 (C.M.A. 1985). This observation holds true today; experience dictates that 180 days of confinement, a reduction in rank, and forfeitures for six months is inappropriately severe for these offenses—simple assaults and a drunken threat. *Cf. United States v. Richard*, No. ACM 39918 (rem), 2023 CCA LEXIS 371, at *9 (A.F. Ct. Crim. App. Sep. 6, 2023) (unpublished) (reassessing sentence to ten days’ confinement for grabbing a victim’s hand and striking her shoulder). This Honorable Court should exercise its authority under Article 66, UCMJ, and disapprove reduction in rank as inappropriately severe. Good order and discipline is a two-way street: The Air Force should not court-martial an individual—after placing him in a no-fail mission, without adequate resources—when he snaps because of the demands the Air Force itself placed on him. The Air Force should have helped TSgt Scott instead of taking him to a court-martial.

There is an additional detail that his Court should consider as part of the “circumstances of the case”—the cost of the reduction in rank as punishment. The dollar value of TSgt Scott’s reduction in rank was \$166,323.60 in lost retirement payments. So, is the appropriate punishment a financial penalty of over \$165,000.00? The answer is resoundingly, “no.” TSgt Scott was confined for 180 days and, because of his forfeitures, punished with the loss of \$22,224.00. Confinement for 180 days, the loss of over \$22,000.00, and being labeled a convict for life is

enough punishment for these Article 15-type crimes.

This Court should not approve TSgt Scott's reduction in rank to E-5 given the job stress he was under, given the lack of resources from the Air Force, and given the nature and seriousness of his offenses.

2. The Particular Appellant and his Record of Service

It is not hyperbole to say that TSgt Scott's record of service is arguably in the top one percent for enlisted members—and maybe even officers—of records that have been processed through this Court. TSgt Scott built an “AFE unit from scratch,” drove Air Force wide changes, and drove DOD-wide changes (with another DOD-wide change that has hopefully already come by the time of this appeal). Def. Ex. R.

TSgt Scott presented 21 character letters, all glowing about his work performance, character, and personality. For example, a retired Master Sergeant said that TSgt Scott “takes pride in providing a product that literally saves lives.” Def. Ex. T. This Master Sergeant said, “I would absolutely trust TSgt Scott to pack any parachute I was asked to jump in” and that TSgt Scott “ranks in the top of all TSgts that I have ever supervised.” *Id.* Another retired Master Sergeant said, “I would rate TSgt Scott as among the top 1% of NCO's and individuals I've known in over 26 years of active and contractor time. During that time I had 6 assignments, 10 deployments, and worked with Tier One operators in the Army, Navy, and Air Force.” Def. Ex. U.

This Court should consider that TSgt Scott's impact has saved lives. When AFSOC wanted to know how to fix a parachute design flaw after a fatality, they called TSgt Scott. He knew the answer and AFSOC followed his advice. They bought 1,000 devices to fix faulty parachutes. This fix was ultimately implemented across the DOD. Def. Ex. R. TSgt Scott did not stop there. He was a primary developer of the “left side O2 pouch,” which he helped design after a parachutist was

injured. He also pushed the development of changes to the reserve rip cord, which was in testing phase at three units at the time of his court-martial. These were real-world changes that improved the safety of our warfighters.

Additionally, TSgt Scott's impact is still ongoing and will be for quite some time: He co-authored the syllabus for the Air Force's Rigger School. His dedication and knowledge will enable new riggers to become seasoned professionals who save lives when they are in the field.

WHEREFORE, TSgt Scott respectfully requests that this Honorable Court disapprove his reduction in rank to E-5.

II.

AS APPLIED TO TECHNICAL SERGEANT SCOTT 18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."

Additional Facts

After his conviction, the Government determined that TSgt Scott's conviction qualified for a firearms prohibition under 18 U.S.C. § 922. The Government did not specify which section of 18 U.S.C. § 922 applied to TSgt Scott.

Standard of Review

This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Lepore*, 81 M.J. 759, 760 (A.F. Ct. Crim. App. 2021).

Law and Analysis

1. Section 922 is unconstitutional as applied to TSgt Scott.

The test for applying the Second Amendment is as follows:

When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's

historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Bruen, 597 U.S. at 24 (quoting *United States v. Konigsberg*, 366 U.S. 36, 50, n.10 (1961)).

Presumably the Government intended to apply Section 922(g)(1), which bars the possession of firearms for those convicted "in any court, of a crime punishable by imprisonment for a term exceeding one year." Under *Bruen*, subsection (g)(1) can constitutionally apply to TSgt Scott. To prevail, the Government would have to show a historical tradition of applying an undifferentiated ban on firearm possession, no matter the convicted offense. Murder or mail fraud, rape or racketeering, battery or bigamy—all would be painted with the same brush. This the Government cannot show.

The historical tradition took a narrow view of firearms regulation for criminal acts than that reflected in Section 922:

[A]ctual "longstanding" precedent in America and pre-Founding England suggests that a firearms disability can be consistent with the Second Amendment to the extent that . . . its basis credibly indicates *a present danger that one will misuse arms against others and the disability redresses that danger.*

C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y 695, 698 (2009) (emphasis added). Prior to 1961, "the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a 'crime of violence.'" *Id.* at 699. Earlier, the Uniform Firearms Act of 1926 and 1930 stated that "a person convicted of a 'crime of violence' could not 'own or have in his possession or under his control, a pistol or revolver.'" *Id.* at 701, 704 (quotations omitted). A "crime of violence" meant "committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, [larceny], burglary, and housebreaking." *Id.* at 701 (quotations omitted). TSgt Scott's offense falls short of these. It was not until 1968 that Congress "banned possession and extended the prohibition on receipt to include

any firearm that ever had traveled in interstate commerce.” *Id.* at 698. “[I]t is difficult to see the justification for the complete lifetime ban for all felons that federal law has imposed only since 1968.” *Id.* at 735.

The Third Circuit recently adopted this logic to conclude that § 922(g)(1) was unconstitutional as applied to an appellant with a conviction for making a false statement to obtain food stamps, which was punishable by five years’ confinement. *Range v. AG United States*, 69 F.4th 96, 98 (3rd Cir. 2023), *vacated* (U.S. July 2, 2024) (remanding for further consideration in light of *United States v. Rahimi*, 602 U.S. ___, 2024 U.S. LEXIS 2714 (June 21, 2024)).³ Evaluating Section 922(g)(1) in light of *Bruen*, the court noted that the earliest version of the statute prohibiting those convicted of crimes punishable by more than one year of imprisonment, from 1938, “applied only to violent criminals.” *Id.* at 104 (emphasis in original). It found no “relevantly similar” analogue to imposing lifetime disarmament upon those who committed nonviolent crimes. *Id.* at 103–05. While TSgt Scott’s convictions may colloquially qualify as “violent,” the real question is whether they meet the historical tradition of regulating firearms based on a more limited framing of “violent.”

In addition to the distinction on violence, a felony conviction today is vastly different from what constituted a felony prior to the 20th century, let alone at the time of this country’s founding. This is problematic because categorizing crimes as felonies has not only increased, but done so in a manner inconsistent with the traditional understanding of a felony:

The need [for historical research] is particularly acute given the cancerous growth since the 1920s of “regulatory” crimes punishable by more than a year in prison, as distinct from traditional common-law crimes. The effect of this growth has been to expand the number and types of crimes that trigger “felon” disabilities to rope in persons whose convictions do not establish any threat that they will physically harm

³ Both the United States and Range have asked the Supreme Court to grant certiorari in this case. Brief for Respondent Bryan David Range at 5, *Garland v. Range*, No. 23-374 (U.S. Oct. 18, 2023).

anyone, much less with a gun.

Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y at 697. Notably, the “federal ‘felon’ disability--barring any person convicted of a crime punishable by more than a year in prison from possessing any firearm--is less than [64] years old.” *Id.* at 698. In fact, “one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I.” *Id.* at 708. On this point alone, the Government has not proven that such a ban is consistent with this country’s history and tradition.

The recent case of *United States v. Rahimi* does not change the analysis. 2024 U.S. LEXIS 2714 (June 21, 2024). In *Rahimi*, the Supreme Court addressed the validity of Section 922(g)(8)(C)(i), which applies once a court has found that a defendant “represents a credible threat to the physical safety of another” and issues a restraining order. *Id.* at *26. The Supreme Court concluded that the historical analysis supported the proposition that when “an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *Id.* at *25.

But the historical analogue breaks down when applied here. In *Rahimi*, the Supreme Court noted that the “surety” and “going armed laws” that supported a restriction involved “whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* at *26. The Supreme Court also noted that surety bonds were of limited duration, and that Section 922(g)(8) only applied while a restraining order was in place. *Id.* Additionally, the majority pointed out that Section 922(g)(8) “involved judicial determinations,” comparable to the historical surety laws’ “significant procedural protections.” *Id.* at *23.

By contrast, this case never involved a weapon threat, is devoid of any procedural protection, and the firearms ban will last forever. Ultimately, the Supreme Court itself noted the

limited nature of its holding: “We conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be *temporarily* disarmed consistent with the Second Amendment.” *Id.* at *30 (emphasis added). Such a narrow holding cannot support the broad restriction encompassed here.

2. This Court may order correction of the EOJ.

In *United States v. Lepore*, citing to the 2016 Rules for Courts-Martial (R.C.M.), this Court held, “the mere fact that a firearms prohibition annotation, not required by the Rules for Courts-Martial, was recorded on a document that is itself required by the Rules for Courts-Martial is not sufficient to bring the matter within our limited authority under Article 66, UCMJ.” 81 M.J. at 763. Despite the court-martial order erroneously identifying that A1C Lepore fell under the firearms prohibition, this Court did not act because the “correction relates to a collateral matter and is beyond the scope of our authority under Article 66.” *Id.* at 760.

Six months after this Court’s decision in *Lepore*, the CAAF decided *United States v. Lemire*. The CAAF granted Sergeant Lemire’s petition, affirmed the Army Court of Criminal Appeals’ (ACCA) decision, and “directed that the promulgating order be corrected to delete the requirement that Appellant register as a sex offender.” 82 M.J. 263, 2022 CAAF LEXIS 182, at *1 n.* (C.A.A.F. 2022) (decision without published opinion). This disposition stands in tension with *Lepore*.

The CAAF’s decision in *Lemire* reveals three things. First, the CAAF has the power to correct administrative errors in promulgating orders.⁴ Second, the CAAF believes that CCAs have

⁴ While a promulgating order was at issue in *Lemire*, the same should apply to the EOJ, which replaced the promulgating order as the “document that reflects the outcome of the court-martial.” *Manual for Courts-Martial, United States* (2019 ed.), App. 15 at A15-22.

the power to address collateral consequences under Article 66 as well since it “directed” the ACCA to fix—or have fixed—the erroneous requirement that Sergeant Lemire register as a sex offender. Third, if the CAAF and the CCAs have the power to fix administrative errors under Article 66 as they relate to collateral consequences, then perforce, they also have the power to address constitutional errors in promulgating orders, even if the Court deems them to be a collateral consequence.

Moreover, *Lepore* relates to a prior version of the Rules for Courts-Martial—“[a]ll references in this opinion to the UCMJ and [R.C.M.] are to the *Manual for Courts-Martial, United States* (2016 ed.)” 81 M.J. at 760 n.1. In the 2019 *MCM*, both the STR and EOJ contain “[a]ny additional information . . . required under regulations prescribed by the Secretary concerned.” R.C.M. 1101(a)(6), 1111(b)(3)(F). Under DAFI 51-201, *Administration of Military Justice*, dated 14 April 2022, ¶ 29.32, the STR and EOJ must include whether the offenses trigger a prohibition under Section 922. As such, this Court’s analysis in *Lepore* is no longer controlling since the Rules for Courts-Martial now require—by incorporation—a determination on whether the firearm prohibition is triggered.⁵ Thus, this Court can rule in Amn Moore’s favor without taking the case en banc.⁶ If this Court disagrees, Amn Moore offers the above argument to overrule *Lepore* under Joint Rule of Appellate Procedure 27(d).

⁵ *United States v. Robertson*, No. 202000281, 2021 CCA LEXIS 531 (N.M. Ct. Crim. App. Oct. 18, 2021) (unpublished) (ordering correction of an STR because it incorrectly stated Section 922 did not apply); *United States v. Moreldelossantos*, ARMY 20210167, 2022 CCA LEXIS 164 (Mar. 17, 2022) (unpublished) (ordering correction of the STR to change the Subsection 922(g)(1) designator to “No”).

⁶ Amn Moore recognizes this Court has repeatedly ruled against this argument. *See, e.g., United States v. Vanzant*, No. ACM 22004, 2024 CCA LEXIS 215, at *23–26 (A.F. Ct. Crim. App. May 28, 2024). However, this Court has not yet addressed the question of whether the Rules change provides a basis for this Court to reach a different result.

WHEREFORE, TSgt Scott respectfully requests that this Court hold 18 U.S.C. § 922 firearm prohibition unconstitutional as applied to him and order correction of the STR and EOJ to indicate that no firearm prohibition applies in his case.

Respectfully submitted,

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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 30 July 2024.

SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	ANSWER TO ASSIGNMENTS OF
<i>Appellee,</i>	)	ERROR
)	
v.	)	Before Panel No. 1
)	
Technical Sergeant (E-6)	)	No. ACM 40369
CLINT C. SCOTT)	
United States Air Force	)	20 August 2024
<i>Appellant.</i>)	

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

ISSUES PRESENTED

I.

**WHETHER [APPELLANT’S] REDUCTION IN RANK IS
INAPPROPRIATELY SEVERE.**

II.

**WHETHER, AS APPLIED TO [APPELLANT], 18 USC
SECTION 922 IS UNCONSTITUTIONAL BECAUSE THE
GOVERNMENT CANNOT DEMONSTRATE THAT
BARRING HIS POSSESSION OF FIREARMS IS
“CONSISTENT WITH THE NATION’S HISTORICAL
TRADITION OF FIREARM REGULATION.”¹**

STATEMENT OF CASE

The United States generally agrees with Appellant’s statement of the case. Appellant received Article 65(d) review on 20 September 2022. Thus, his court-martial was final under Article 57(c)(1) before the 23 December 2022 change to Article 66 that would purportedly give this Court jurisdiction over his court-martial. *See* Pub. L. No. 117-263, § 544(b)(1)(A), 136 Stat.

¹ N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1, 24 (2022).

2395, 2582 (23 Dec. 2022). The United States asserts that this Court has no jurisdiction to review Appellant's case, but recognizes this Court's contrary, published decision in United States v. Vanzant, ___ M.J. _____ (A.F. Ct. Crim. App. 28 May 2024). The United States continues to assert this position regarding lack of jurisdiction in case of additional litigation at our superior Court.

On 7 June 2022, a military judge sitting as the general court-martial convicted Appellant, consistent with his pleas, of one charge and one specification for communicating a threat in violation of Article 115, UCMJ, one charge and two specifications for assault consummated by a battery in violation of Article 128, UCMJ, and one additional charge and one specification of assault consummated by a battery in violation of Article 128, UCMJ. (R. at 83, *Entry of Judgement*, 10 August 2022 (EOJ), ROT, Vol. 1). A panel sentenced Appellant to a reduction in grade to E-5, total forfeitures for six months, and confinement for 180 days. (R. at 322, *EOJ*, 10 August 2022, ROT, Vol. 1). After considering Appellant's post-trial submissions, the convening authority reduced the adjudged forfeitures from total forfeitures to forfeitures of \$3,704.00 of pay per month for six months and deferred Appellant's reduction of rank until the date of the EOJ. (*Convening Authority Decision on Action Memorandum*, 28 July 2022, ROT, Vol. 1).

STATEMENT OF FACTS

2017 Assault of N.R.

In 2017, Appellant, N.R., Staff Sergeant (SSgt) B.², and others were drinking at a bar in Globe, AZ. (R. at 34.) N.R. became intoxicated and was taken out to the parking lot to cool off after having an argument with SSgt B. (R. at 228.) SSgt B. and N.R. were sitting in the truck.

² SSgt B is only referred to by his last name throughout the trial. His first name is unknown.

N.R. was in the passenger seat and the window was down. Appellant was standing outside the truck on the passenger side. SSgt B. told N.R. “Hey, we are supposed to be a family.” N.R. was upset by the comment and said, “Fuck the family then.” Id. Appellant reached in through the passenger window, wrapped his arm around N.R.’s head, grabbed his face, and started pulling him out of the truck. (R. at 229.) He pulled him about halfway out of the truck before two people intervened and pulled him off N.R. Id.

When asked if this incident was brought to the attention of leadership, N.R. said, “Not that I know of. None of this was, no.” (R. at 233.) When asked if this incident was considered resolved in 2018, N.R. said, “[Appellant] and I have not spoken about this situation. That is the whole reason why I am here looking for closure. Nothing comes to mind that this was resolved in a formal way or even an informal way, which was what I prefer anyway.” (R. at 234.)

2021 Threatening and Assault of B.Z.

Appellant was B.Z.’s flight chief. (R. at 53.) B.Z. had only been in the Air Force for around 2 years and had been at the base for less than a year at the time of the incident. (R. at 201.)

While at the Arizona Brewhouse with others from the unit for a going away party, Appellant was again intoxicated. (R. at 30.) Appellant approached B.Z. and put his hand on B.Z.’s face and pushed her back. (R. at 204.) Appellant very seriously told B.Z. that he “would punch her hard enough to knock her pigtailed off her head.” (R. at 26.) B.Z. felt threatened and intimidated because she had heard about Appellant getting violent in the past. (R. at 205.) He doubled down on the threat when B.Z. asked “Is that a threat?” and he responded “No, it is a promise.” Id.

Later in the evening, Appellant approached B.Z. again and pushed her on the shoulder. The push was so hard she fell through two chairs and landed next to a nearby table. (R. at 206.) There were other people around, and they asked B.Z. if she wanted them to call the police. Id. They told B.Z. that they had seen Appellant put his hands on her. Id. B.Z. was in pain and embarrassed because she had just been pushed down in front of her peers. Id. Appellant told the three bystanders that B.Z. “would likely sleep with them because she slept with weirdos.” (Pros. Ex. 1).

Appellant left the area again. (R. at 207.) When he returned, he bragged about having punched a guy in the face and knocking him out in the parking lot. Id. B.Z. got up to leave the table, and Appellant stuck out his left arm and grabbed her breast. Id. Despite Trial Defense Counsel’s repeated questioning, B.Z. was adamant that Appellant grabbed her breast. (R. at 216, 217.) B.Z. told Appellant “Sir, you just grabbed my boob.” (R. at 207.) Appellant smirked and sarcastically said, “Sorry, [B.Z.], didn’t mean to.” (R. at 207, 216.) At this point, B.Z. felt humiliated in front of her peers. (R. at 207.)

Later, when B.Z. came back from the bathroom, Appellant started making comments about B.Z.’s body. He said he enjoyed her running in front of him because he had a nice view. Appellant said that he knows what B.Z.’s clitoris and hymen look like and that everything is in 3-D in her PT uniform. (Pros. Ex. 1).

Master Sergeant (MSgt) K was Appellant’s supervisor and friend. (R. at 262-263.) MSgt K’s suicide occurred around 1 January 2017, at least a year before Appellant’s assault of N.R and more than four years before Appellant’s communication of a threat and assault of B.Z. (R. at 263.) At trial, Appellant presented no evidence that Master Sergeant K’s suicide impacted his actions and should be considered as evidence in mitigation.

ARGUMENT

I.

TECHNICAL SERGEANT SCOTT'S REDUCTION IN RANK IS NOT INAPPROPRIATELY SEVERE.

Additional Facts

Appellant was known to become violent. N.R. testified that “Sometimes [Appellant] gets mad when he is drinking and you know, he gets violent.” (R. at 180.) Aside from the charged conduct, Appellant had been violent with N.R. by slapping him and pinning him up against a wall by his neck. (R. at 180-181.)

The Plea Agreement

Appellant pleaded guilty to one specification of communicating a threat, in violation of Article 115, UCMJ, and three specifications of assault consummated by a battery, in violation of Article 128, UCMJ. Appellant’s plea of guilty was pursuant to a plea agreement he successfully negotiated on 6 June 2022. (App. Ex. III). Appellant’s 6 June 2022 offer explicitly included a reduction in rank to no lower than E-5 as a sentence limitation. (App. Ex. III, para. 4.b). Before the accepted offer, Appellant submitted an offer for plea agreement that was rejected by the convening authority. (ROT Volume 3 of 4, *Offer for Plea Agreement* dated 26 May 2022). That offer also contained a provision explicitly including a reduction in rank to no lower than E-5 as a sentence limitation. Id.

The maximum sentence possible under the plea agreement was a dishonorable discharge, 18 months confinement, total forfeitures, and a reduction to the grade of E-5. (App. Ex. III, para. 4). In exchange for his plea of guilty, the Government withdrew and dismissed Charge II and its specification, and Specifications 1, 3, and 5 of Charge III. (App. Ex. III, para. 3). Charge II

alleged a violation of Article 120, UCMJ, which would have required Sex Offender Notification in accordance with Department of Defense Instruction 1325.07, if Appellant had been convicted.

Trial Defense Counsel's Sentencing Argument

During sentencing, Appellant's civilian trial defense counsel not only mentioned the reduction of rank as a "tool" available to members in sentencing, but explicitly requested a reduction of rank as Appellant's punishment. (R. at 293, 297.) He also provided members a breakdown of the amount of money Appellant would lose from his retirement from a reduction in rank to encourage them to give Appellant the reduction in rank because the loss of future retirement benefits was "not a light sentence at all." (Defense Ex. V, R. at 297.)

Post Trial Clemency

After trial, Appellant submitted matters to the convening authority asking that the convening authority defer the reduction in grade until the EOJ was signed and deferment of all the adjudged forfeitures of pay and allowances until the EOJ was signed. The convening authority denied the request for deferment of all adjudged forfeitures but did reduce the forfeitures of pay and did grant Appellant's request for deferment of the reduction in grade. (*Convening Authority Decision on Action*, 28 July 2022, ROT, Vol. 1).

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 and Analysis

Under 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 power to review the entire record includes the power to consider the allied papers, as well as the record of trial proceedings.” United States v. Hutchison, 57 M.J. 231, 234 (C.A.A.F. 2002).

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). “Absent evidence to the contrary, [an] accused’s own sentence proposal is a reasonable indication of its probable fairness to him.” United States v. Cron, 73 M.J. 718, 739 n.9 (A.F. Ct. Crim. App. 2014) (citation omitted).

Although this Court has discretion to determine whether a sentence is appropriate, it has “no power to ‘grant mercy.’” Hamilton, 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)

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.”

Joyner, 39 M.J. at 966.

A reduction of one rank is not inappropriately severe given Appellant's crime, his own request to the panel for such punishment, and the lack of mitigating circumstances.

Even though Appellant proposed a reduction to the rank of E-5 in both offers for plea agreement and expressly advocated for such punishment to the panel (R. at 297), he now contends that the reduction is inappropriately severe. (App. Br. at 7). Appellant asks this court to consider the dollar value of Appellant's reduction in rank as support for his request for sentence relief, but at trial provided the same evidence of the dollar value to the panel as support for his request for a reduction in rank in lieu of a punitive discharge. (App. Br. at 10, R. at 297, Def. Ex. Y). Appellant's "own sentence proposal is a reasonable indication of its probable fairness to him." Cron, 73 M.J. at 736 n.9. Appellant's sentence including a reduction of one rank to E-5 is not inappropriately severe, and Appellant has not presented compelling mitigating evidence to warrant sentence relief for a reduction in one rank.

To try to bolster his appeal, Appellant cites the suicide of his friend, that occurred in January 2017, a year before his first charge of drunkenly assaulting a subordinate. (App. Br. at 9). Appellant claims, for the first time, that "Master Sergeant K [redacted] s death was still raw and fresh in [his] mind," when he assaulted his subordinate a year later. Id. Appellant makes this claim despite telling the military judge that the assault on N.R. occurred because he "lost control and let [his] temper take over." (R. at 40.) Appellant further insinuates that the assault on another subordinate that occurred more than four years after MSgt K [redacted] 's suicide was also mitigated as "undoubtedly the memory of it and the job stress was something Appellant was dealing with." Id. The death of MSgt K [redacted] , though tragic, was not a matter in mitigation for Appellant's drunken assaults of subordinates. Not once during his colloquy with the military judge or during his extensive question-and-answer unsworn statement did Appellant link

MSgt K 's death to his actions a year and four years later. Even now, Appellant raises no meaningful connection between the death and his actions beyond a bald claim of mitigation based on the memory of his friend's death. This Court has "no power to 'grant mercy,'" Hamilton, 77 M.J. at 587 (citation omitted), and should decline to grant the Appellant the sentence relief requested.

Appellant asserts his service record supports sentence relief. But he provides the same evidence that was introduced at trial to support this assertion. (App. Br. at 11-12, Def. Ex. C-X). This evidence was provided and considered by the panel, and Appellant's sentence reflects consideration of this information. Appellant could have received 18 months confinement and a dishonorable discharge on top of the reduction to E-5, yet he received no punitive discharge and only 180 days of confinement.

Appellant erroneously relies on United States v. Richard, 2023 CCA LEXIS 371 (A.F. Ct. Crim. App. Sep 6, 2023) as support for the argument that this Court should grant sentence relief in this case. Richard is a starkly different circumstance. In Richard, the Court was tasked with reassessing a sentence after three specifications for possessing, distributing, and producing child pornography were dismissed by CAAF. Id. at 2-3. The members in that case only sentenced the appellant to 30 days confinement and a bad conduct discharge. Id. at 2. The Court considered the totality of the circumstances and imposed a sentence no greater than what the panel would have imposed. Id. at 9. Here, none of the specifications were dismissed, and this Court knows what the members would have imposed: reduction of one rank, total forfeitures, and confinement for 180 days. And they did so with all the same information Appellant now cites as evidence for the sentence being inappropriately severe.

Appellant's sentence also appropriately reflects the conduct for which he was convicted. In 2018, Appellant drunkenly assaulted his subordinate, N.R., by wrapping his arm around N.R.'s head and pulling him out of a truck window. (R. at 228-229.) This was not the first time Appellant had assaulted N.R. Appellant had also smacked N.R. (R. at 179) and later "put [N.R.] up against the wall by his neck" during previous temporary duty assignments. (R. at 181.) N.R.'s first thought when Appellant grabbed him was "here we go again." (R. at 180.)

Three years later, Appellant hadn't grown and hadn't learned not to put his hands on subordinates. His reputation for violence preceded him. (R. at 180, 205.) While at a going away party, Appellant not only threatened to punch his subordinate, B.Z., but went on to put his hands on her multiple times throughout the night. The first time he pushed her so hard she fell into a chair. (R. at 206.) Appellant's violence towards B.Z. was so severe that other patrons came to check on her and asked if she wanted them to call the police because they had "been seeing [Appellant] put his hands on [her]" *Id.* Later, Appellant assaulted B.Z. for a second time by putting his hand out and touching her breast. (R. at 207.)

Appellant's behavior was unacceptable for a noncommissioned officer who supervises others. Assaulting subordinates is the type of conduct that erodes good order and discipline and builds distrust in a unit. A noncommissioned officer who shows such disrespect for his subordinates and unit deserves a reduction in rank, and such punishment was necessary to promote justice and maintain good order and discipline in the Air Force. *See* R.C.M. 1002(c). Appellant's sentence of a reduction by one rank to E-5, confinement for 180 days, and forfeiture of pay was not an inappropriate sentence based on the nature and seriousness of his offense.

Appellant's sentence of a reduction of one rank is not inappropriately severe. Not only is it what he requested, but also it reflects the nature and seriousness of the crimes in consideration of the service member. For these reasons, this Court should deny Appellant's requested relief.

II.

THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ. EVEN IF THIS COURT DID POSSESS JURISDICTION TO REVIEW THIS ISSUE, AIR FORCE INSTRUCTION REQUIRED THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT TO ANNOTATE APPELLANT'S CRIMINAL INDEXING. FINALLY, 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO APPELLANT

Additional Facts

The Staff Judge Advocate's first indorsement to the Statement of Trial Results (STR) and EOJ in Appellant's case contains the following statements: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (STR and EOJ, ROT, Vol. 1.)

Standard of Review

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

Law and Analysis

The Gun Control Act of 1968 makes it unlawful for a person to possess a firearm if he has been, *inter alia*, "convicted in any court of a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1).

Appellant asserts that 18 U.S.C. § 922 is unconstitutional as applied to him. (App. Br. at 12). Appellant asserts that any prohibitions on the possession of firearms imposed runs afoul of

the Second Amendment, U.S. CONST. AMEND. II, the Supreme Court’s interpretation of that amendment in N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1 (2022). Appellant’s constitutional argument is without merit and is a collateral matter beyond this Honorable Court’s authority to review.

A. This Court lacks jurisdiction to determine whether Appellant should be criminally indexed in accordance with 18 U.S.C. § 922.

This Court recently held in its published opinion in United States v. Vanzant, No. ACM 22004, 2024 CCA LEXIS 215, __ M.J. __ (A.F. Ct. Crim. App. 28 May 2024), that 18 U.S.C. § 922(g)’s firearm prohibitions and the criminal indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence, so they are beyond the scope of this Court’s jurisdiction under Article 66, UCMJ. Id. at *24.

B. The Statement of Trial Results and Entry of Judgment were prepared correctly in accordance with the applicable Air Force Instruction.

Even if this Court has jurisdiction to review this issue, Appellant was found guilty of Communicating Threats in violation of Article 115 UCMJ, which is a crime punishable by imprisonment for a term exceeding one year, that is, by 3 years of confinement. (MCM, pt. IV, para. 53.d.(1) (2019 ed.); R. at 62-63). Thus, the Staff Judge Advocate followed the appropriate Air Force regulations in signing the first indorsement to the STR and EOJ. DAFI 51-201, dated 14 April 2022, paras. 29.30, 29.32.

C. The Firearm Prohibition in the Gun Control Act of 1968 is Constitutional as Applied to Appellant and his Conviction for a Crime of Violence.

The Second Amendment provides: “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST., amend. II. But as the Supreme Court has repeatedly emphasized, “the right secured by the Second Amendment is not unlimited.” District of Columbia v. Heller, 554 U.S. 570, 626

(2008); *see* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 20 (2022); McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion). “[T]he right was *never* thought to sweep indiscriminately.” United States v. Rahimi, 602 U.S. ___, 144 S. Ct. 1889, 1897, Docket No. 22-915, 2024 U.S. LEXIS 2714 (21 June 2024) (slip op.). The history of firearms regulation reflects “a concern with keeping firearms out of the hands of categories of potentially irresponsible persons, including convicted felons,” Barrett v. United States, 423 U.S. 212, 220 (1976), and “an intent to impose a firearms disability on *any* felon based on the fact of conviction.” Lewis v. United States, 445 U.S. 55, 62 (1980) (emphasis added). Firearms prohibitions for felons are “presumptively lawful.” Rahimi, 144 S. Ct. at 1902 (citing Heller, 554 U.S. at 626). Because Appellant has been convicted by a general court-martial of a serious crime, application of 18 U.S.C. § 922(g) to him is constitutional.

Appellant’s argument presumes, incorrectly, that his crime was not a violent offense or “crime of violence.” (App. Br. at 13.) But federal law defines the term “crime of violence” as “an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. §§ 924(c)(3)(A), 3156(a)(4)(A) (emphasis added). A threat to punch another individual, like Appellant made, is a “violent offense.” Because Appellant’s constitutional argument is without merit and is a collateral matter beyond this Honorable Court’s authority to review, the Court should deny the assignment of error.

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 20 August 2024.

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