

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
)	
Airman First Class (E-3)	)	No. ACM S32730
KHALIL E. BARNETTE,)	
United States Air Force	)	15 August 2022
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **22 October 2022**. The record of trial was docketed with this Court on 24 June 2022. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted

HEATHER M. CAINE, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 15 August 2022.

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM S32730
KHALIL E. BARNETTE, 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 15 August 2022.



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



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND
	)	MOTION TO ATTACH
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM S32730
KHALIL E. BARNETTE,)	
United States Air Force	)	28 September 2022
<i>Appellant</i>)	

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

Pursuant to Rule 16 of this Honorable Court’s Rules of Practice and Procedure, and Rule for Courts-Martial (R.C.M.) 1115, Appellant hereby moves to withdraw his case from appellate review. Appellant has fully consulted with Maj Heather M. Caine, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise to withdraw his case from appellate review. Further, pursuant to Rules 23(b) and 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel asks this Court to attach the two-page document appended to this pleading to Appellant’s Record of Trial. The appended document is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court’s Rules of Practice and Procedure.

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

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[REDACTED]

HEATHER M. CAINE, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ATTACHMENT

**WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL COURTS-MARTIAL SUBJECT TO
REVIEW BY A COURT OF CRIMINAL APPEALS**
(For use in courts-martial referred on or after 1 January 2019)

I have read the attached entry of judgment in my case dated 20220502.

I have consulted with Major Heather M. Caine, my (associate) defense counsel concerning my appellate rights and I am satisfied with his/her advice.

I understand that:

1. If I do not waive or withdraw appellate review –

- a. My court-martial will be ☒ automatically reviewed by the Air Force Court of Criminal Appeals per Article 66(b)(3) or ☐ is eligible for direct review by the _____ Court of Criminal Appeals per Article 66(b)(1)(A-B).
- b. The Court of Criminal Appeals will review my case to determine whether the findings and sentence are correct in law and fact and whether the sentence is appropriate.
- c. After review by the Court of Criminal Appeals, my case could be reviewed for legal error by the United States Court of Appeals for the Armed Forces on petition by me or on request of the Judge Advocate General.
- d. If the Court of Appeals for the Armed Forces reviews my case, my case could be reviewed for legal error by the United States Supreme Court on petition by me or the Government.
- e. I have the right to be represented by military counsel, at no cost to me, or by civilian counsel, at no expense to the United States, or both, before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Supreme Court.

2. If I waive or withdraw appellate review –

- a. My case will not be reviewed by the Court of Criminal Appeals, or be subject to further review by the Court of Appeals for the Armed Forces, or by the Supreme Court under 28 U.S.C. § 1259.
- b. My case will be reviewed by a judge advocate per Article 65(d)(3). Upon completion of that review, I may submit an application for consideration by The Judge Advocate General under Article 69(b), for review limited to the issue of whether this waiver or withdrawal was invalid under the law. See R.C.M. 1201(h)(4)(B).
- c. An Article 69(b) application must be filed within one year after the date of completion of review under Article 65(d)(3), if I can show good cause for filing later the period may be extended up to three years after the completion date.
- d. I may file a waiver of appellate review at any time after entry of judgment.
- e. I may file withdrawal from appellate review any time before such review is completed.
- f. A waiver or withdrawal, once filed, cannot be revoked, and bars further appellate review. A waiver or withdrawal may not be filed in any case where the sentence includes death.

3. Whether or not I waive or withdraw appellate review, I may petition the Judge Advocate General for a new trial under Article 73 on the grounds of newly discovered evidence or fraud on the court at any time within three years after the date of the entry of judgment.

I understand the foregoing, and I (waive my rights to appellate review) (withdraw my case from appellate review). I make this decision freely and voluntarily. No one has made any promises that I would receive any benefit from this waiver/withdrawal, and no one has forced me to make it.

Khalil E. Barnette

A1C

TYPED NAME OF ACCUSED

RANK OF ACCUSED

28 September 2022

SIGNATURE OF ACCUSED

DATE

STATEMENT OF COUNSEL

(Check appropriate block)

- ☐ 1. I represented the accused at his/her court-martial
- ☐ 2. I am associate counsel detailed under R.C.M. 1115(b). I have communicated with the accused's (detailed) (individual military) (civilian) (appellate) defense counsel concerning the accused's waiver/withdrawal and discussed this communication with the accused.
- ☐ 3. I am substitute counsel detailed under R.C.M. 1115(b).
- ☐ 4. I am civilian counsel whom the accused consulted concerning this matter. I am a member in good standing of the bar of _____
- ☒ 5. I am appellate defense counsel for the accused.

I have advised the accused of his/her appellate rights and of the consequences of waiving or withdrawing appellate review. I was given a reasonable opportunity to examine the record of trial and any attachments in the accused's case before advising the accused. The accused has elected to (waive) (withdraw) appellate review.

Heather M. Caine

Appellate Defense Counsel (AJAJA)

TYPED NAME OF COUNSEL

UNIT OF COUNSEL

Major

RANK OF COUNSEL

BUSINESS ADDRESS (If Civilian Counsel)

28 September 2022

SIGNATURE OF COUNSEL

DATE

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

UNITED STATES)	No. ACM S32730
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Khalil E. BARNETTE)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 28 September 2022, Appellant submitted a Motion to Withdraw from Appellate Review and Motion to Attach. Specifically, Appellant moved to attach a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, signed by Appellant and Appellant's counsel on 28 September 2022.

The Government did not submit any opposition.

Accordingly, it is by the court on this 4th day of October, 2022,

ORDERED:

Appellant's Motion to Withdraw from Appellate Review and Motion to Attach are **GRANTED**. Appellant's case is forwarded to the Appellate Records Branch, JAJM, for further processing in accordance with Rules for Courts-Martial 1115(f)(3) and 1201, *Manual for Courts-Martial, United States* (2019 ed.).



FOR THE COURT

[Redacted signature]

ANTHONY F. ROCK, Maj, USAF
Deputy Clerk of the Court