

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 S32718
DONIVAN B. DAGAN,)	
United States Air Force,	)	21 January 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 Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **30 March 2022**. The record of trial was docketed with this Court on 30 November 2021. 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,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773



GRANTED
25 JAN 2022

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 21 January 2022.

Respectfully submitted,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 S32718
DONIVAN B. DAGAN, 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
(240) 612-4800

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 25 January 2022.

A handwritten signature in black ink that reads "Mary Ellen Payne". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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
)	
Airman First Class (E-3),	)	No. ACM S32718
DONIVAN B. DAGAN,)	
United States Air Force,	)	23 March 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 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 **29 April 2022**. The record of trial was docketed with this Court on 30 November 2021. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 16 August 2021, consistent with his pleas, a military judge in a special court-martial at Kadena Air Base, Japan convicted Appellant of one charge and two specifications of wrongful distribution and use of LSD in violation of Article 112a, Uniform Code of Military Justice. R. at 45. The military judge sentenced appellant to be reduced to E-1, to be confined for 30 days, and to be discharged from the service with a bad conduct service characterization. R. at 65. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action, dated 3 September 2021.

The record of trial consists of two volumes with five prosecution exhibits, seven defense and three appellate exhibits; the transcript is 66 pages. Appellant is not confined.



GRANTED
28 MAR 2022

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. 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,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 23 March 2022.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Spencer R. Nelson', with a stylized flourish at the end.

SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

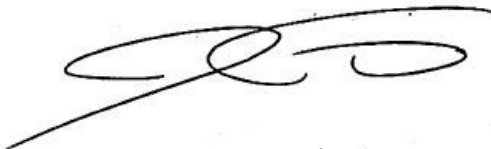
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM S32718
DONIVAN B. DAGAN, 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.

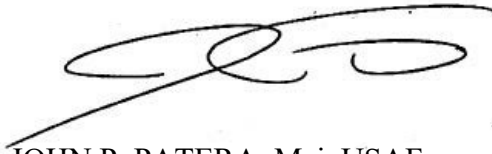
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOHN P. PATERA, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 25 March 2022.

A handwritten signature in black ink, appearing to read 'JP Patera', with a long horizontal stroke extending to the left.

JOHN P. PATERA, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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
)	
Airman First Class (E-3),	)	No. ACM S32718
DONIVAN B. DAGAN,)	
United States Air Force,	)	21 April 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)(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 **29 May 2022**. The record of trial was docketed with this Court on 30 November 2021. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 16 August 2021, consistent with his pleas, a military judge in a special court-martial at Kadena Air Base, Japan convicted Appellant of one charge and two specifications of wrongful distribution and use of LSD in violation of Article 112a, Uniform Code of Military Justice. R. at 45. The military judge sentenced appellant to be reduced to E-1, to be confined for 30 days, and to be discharged from the service with a bad conduct service characterization. R. at 65. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action, dated 3 September 2021.

The record of trial consists of two volumes with five prosecution exhibits, seven defense three appellate exhibits; the transcript is 66 pages. Appellant is not confined.



GRANTED
26 APR 2022

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. 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,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 21 April 2022.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'S. Nelson', with a stylized flourish at the end.

SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 S32718
DONIVAN B. DAGAN, 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.

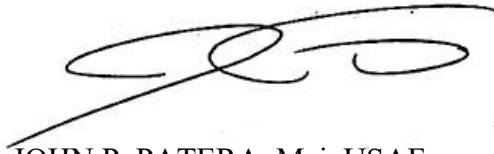
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOHN P. PATERA, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 22 April 2022.

A handwritten signature in black ink, appearing to read 'JP PATERA', with a long horizontal stroke extending to the left.

JOHN P. PATERA, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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
)	
Airman First Class (E-3),	)	No. ACM S32718
DONIVAN B. DAGAN,)	
United States Air Force,	)	19 May 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)(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 **28 June 2022**. The record of trial was docketed with this Court on 30 November 2021. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 16 August 2021, consistent with his pleas, a military judge in a special court-martial at Kadena Air Base, Japan convicted Appellant of one charge and two specifications of wrongful distribution and use of LSD in violation of Article 112a, Uniform Code of Military Justice. R. at 45. The military judge sentenced appellant to be reduced to E-1, to be confined for 30 days, and to be discharged from the service with a bad conduct service characterization. R. at 65. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action, dated 3 September 2021. The record of trial consists of two volumes with five prosecution exhibits, seven defense exhibits, and three appellate transcript is 66 pages. Appellant is not confined.



Panel is currently assigned 20 cases; 12 cases are pending initial AOE's before this Court.

GRANTED
23 MAY 2022

Counsel has a *DuBay* hearing scheduled at the end of this month and two cases pending petitions to the Court of Appeals for the Armed Forces. 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. Nine cases have priority over the present case:

1. *United States v. Rocha*, ACM 40134 – Contrary to his pleas, Appellant was convicted at a general court-martial of one charge, one specification of indecent conduct, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 504. The judge sentenced Appellant to reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for 90 days, and a bad conduct discharge. R. at 532. On 26 April 2021, the convening authority took no action on the findings, approved the sentence, and denied Appellant's request for waiver of all adjudged and automatic forfeitures. The record of trial consists of four volumes. The transcript is 532 pages. There are 22 Prosecution Exhibits, eight Defense Exhibits, and 39 Appellate Exhibits. Appellant is not confined. Counsel has finished reviewing the record of trial, has reviewed sealed materials, and is finalizing the AOE. Barring unforeseen circumstances, Counsel intends to file the AOE next week.

2. *United States v. Lugo*, ACM S32704 – Pursuant to his pleas, Appellant was convicted at a special court-martial for one charge, one specification of impaired driving, in violation of Article 113, Uniform Code of Military Justice (UCMJ); one charge, one specification of incapacitation from drug use, in violation of Article 112, UCMJ; one charge, one specification of wrongful use of a controlled substance, in violation of Article 112a, UCMJ; and one charge, one specification of violating a lawful general order, in violation of Article 92, UCMJ. Record (R.) at 269. The judge sentenced Appellant to reduction to the grade of E-1, a bad conduct discharge, and

confinement for 13 months. R. at 341. Pursuant to his plea agreement, all terms of confinement ran concurrently so Appellant's total confinement was four months. R. at 261. The convening authority took no action on the findings or sentence of the case. Record of Trial, Vol. 1, Convening Authority Decision on Action, 4 June 2021. The record of trial consists of three volumes. The transcript is 342 pages. There are eight Prosecution Exhibits, 12 Defense Exhibits, and 17 Appellate Exhibits. Appellant is not confined. On 18 May 2022, Counsel filed a motion to Withdraw from Appellate Review and Attach.

3. *United States v. Lampkins*, ACM 40135 – Appellant was convicted at a general court-martial of one charge, one specification of attempted larceny, in violation of Article 80, Uniform Code of Military Justice (UCMJ); one charge two specifications of larceny, in violation of Article 121, UCMJ; and one charge, 43 specifications of making, drawing, or uttering check, draft, or order without sufficient funds, in violation of Article 123a, UCMJ. Record (R.) at 317. The judge sentenced Appellant to a reprimand, reduction to the grade of E-1, 46 months confinement, and a dishonorable discharge. R. at 381. The convening authority denied Appellant's request for deferment and waiver of automatic forfeitures and a deferment of reduction in grade. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. The military judge recommended that all confinement in excess of 24 months be suspended for a period of two years and one month from the date of the findings to allow Appellant to pay restitution to one of the named victims. ROT, Vol. 1, Statement of Trial Results. The convening authority accepted the judge's recommendation and approved the rest of the sentence. ROT, Vol. 1, Convening Authority Decision on Action. The convening authority took no action on the findings. *Id.* The record of trial consists of twelve volumes. The transcript is 382 pages. There are two Prosecution Exhibits, 11 Defense Exhibits, and 29 Appellate Exhibits. Appellant is not confined. Although Counsel has not

reviewed the transcript, Counsel has reviewed the Prosecution Exhibits, Defense Exhibits, Appellate Exhibits, and the majority of the allied papers.

4. *United States v. Cannon*, ACM 40136 – Pursuant to his pleas, Appellant was convicted at a general court-martial by a military judge at Malmstrom AFB, Montana for one charge, two specifications of committing a lewd act upon a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ); and one charge, one specification of attempting to commit a sexual act upon a child, in violation of Article 80, UCMJ. Record (R.) at 255. The judge sentenced Appellant to reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for 18 months, and a dishonorable discharge. R. at 279. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action, 27 April 2021. The record of trial consists of six volumes. The transcript is 280 pages. There are four Prosecution Exhibits, one Defense Exhibit, and 31 Appellate Exhibits. Appellant is not confined for these offenses. Counsel has not begun a review of Appellant's case.

5. *United States v. Heard*, ACM 40159 – In accordance with her pleas, Appellant was convicted of wrongful distribution of marijuana, in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charge, two specifications of making a false statement in violation of federal law, in violation of Article 134 UCMJ. R. at 72. The military judge sentenced Appellant to be reduced in grade to E-1, to be confined for 100 days, and to be discharged from the service with a bad conduct discharge characterization. R. at 116. The convening authority took no action on the findings, approved the sentence in its entirety, and dismissed Charge I, Specifications 1 and 2 with prejudice. Record of Trial, Vol. 1, Convening Authority Decision on Action, 17 May 2021. The record of trial consists of two prosecution exhibits, six defense exhibits, and four appellate exhibits. The transcript is 117 pages. Appellant is not currently confined.

Counsel has not begun reviewing Appellant's case.

6. *United States v. Suarez*, ACM S32708 – Consistent with his pleas, a military judge sitting alone found Appellant guilty of one charge, one specification of being absent from his place of duty, in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge, one specification of wrongfully using marijuana, in violation of Article 112a, UCMJ; and one charge, one specification of assault, in violation of Article 128, UCMJ. R. at 56. The judge sentenced Appellant to reduction to the grade of E-1, 89 days of confinement, and a bad conduct discharge. Record of Trial (ROT), Vol 1, Entry of Judgment. The convening authority took no action on the findings or sentence. ROT, Vol 1, Convening Authority Decision on Action. The record of trial consists of five prosecution exhibits, eight defense exhibits, two appellate exhibits, and one court exhibit. The transcript is 91 pages. Appellant is not currently confined. Counsel has not begun reviewing Appellant's case.

7. *United States v. Davis*, ACM S32709 – Consistent with his pleas, a military judge sitting alone found Appellant guilty of one charge, two specifications of wrongful use and distribution of cocaine, in violation of Article 112a, Uniform Code of Military Justice (UCMJ). R. at 48. The judge sentenced Appellant to be reprimanded, to forfeit \$1,190 for six months, be reduced in grade to E-1, to be confined for six months, and to receive a bad conduct discharge. R. at 65. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action. The record of trial consists of three prosecution exhibits, seven defense exhibits, and two appellate exhibits. The transcript is 65 pages. Appellant is not currently confined. Counsel has not begun reviewing Appellant's case.

8. *United States v. Tolano*, ACM 40196 – Pursuant to his pleas, Appellant was convicted at a general court-martial by a military judge at Cannon, AFB, New Mexico for one charge and

two specifications possessing and distributing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 103. The judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for five years, and to be dishonorably discharged from the service. R. at 153. On 17 August 2021, the convening authority denied Appellant's request for deferments of the reduction in grade and adjudged forfeitures. Record of Trial, Volume 1, Convening Authority Decision on Action, 17 August 2021. The record of trial consists of six prosecution exhibits, two defense exhibits, and ten appellate exhibits. The transcript is 154 pages. Appellant is currently confined. Counsel has not begun reviewing Appellant's case.

9. *United States v. Schauer*, ACM 40203 – In accordance with his pleas, Appellant was convicted of wrongful production and possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 59. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 48 months, and to be discharged from the service with a dishonorable service characterization. R. at 83. The convening authority took no actions on the findings and approved the sentence in its entirety. Record of Trial, Vol. 1, Convening Authority Decision on Action, 4 October 2021. The record of trial consists of three volumes, three prosecution exhibits, 11 defense exhibits, one court exhibit, and ten appellate exhibits. The transcript is 84 pages. Appellant is confined. Counsel has not yet reviewed Appellant's case.

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Spencer R. Nelson', with a stylized flourish at the end.

SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 19 May 2022.

Respectfully submitted,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 S32718
DONIVAN B. DAGAN, 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
(240) 612-4800

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 19 May 2022.

A handwritten signature in black ink that reads "Mary Ellen Payne". The signature is written in a cursive, flowing style.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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
)	
Airman First Class (E-3),	)	No. ACM S32718
DONIVAN B. DAGAN,)	
United States Air Force,	)	21 June 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)(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 **28 July 2022**. The record of trial was docketed with this Court on 30 November 2021. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 16 August 2021, consistent with his pleas, a military judge in a special court-martial at Kadena Air Base, Japan convicted Appellant of one charge and two specifications of wrongful distribution and use of LSD in violation of Article 112a, Uniform Code of Military Justice. R. at 45. The military judge sentenced appellant to be reduced to E-1, to be confined for 30 days, and to be discharged from the service with a bad conduct service characterization. R. at 65. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action, dated 3 September 2021. The record of trial consists of two volumes with five prosecution exhibits, seven defense exhibits, and three appellate exhibits; the transcript is 66 pages. Appellant is not confined.

Counsel is currently assigned 19 cases; 10 cases are pending initial AOE’s before this Court.

Counsel has a *DuBay* hearing scheduled in July and three cases pending petitions/supplements to the Court of Appeals for the Armed Forces. 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. Five cases have priority over the present case:

1. *United States v. Lampkins*, ACM 40135 – Appellant was convicted at a general court-martial of one charge, one specification of attempted larceny, in violation of Article 80, Uniform Code of Military Justice (UCMJ); one charge two specifications of larceny, in violation of Article 121, UCMJ; and one charge, 43 specifications of making, drawing, or uttering check, draft, or order without sufficient funds, in violation of Article 123a, UCMJ. Record (R.) at 317. The judge sentenced Appellant to a reprimand, reduction to the grade of E-1, 46 months confinement, and a dishonorable discharge. R. at 381. The convening authority denied Appellant's request for deferment and waiver of automatic forfeitures and a deferment of reduction in grade. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. The military judge recommended that all confinement in excess of 24 months be suspended for a period of two years and one month from the date of the findings to allow Appellant to pay restitution to one of the named victims. ROT, Vol. 1, Statement of Trial Results. The convening authority accepted the judge's recommendation and approved the rest of the sentence. ROT, Vol. 1, Convening Authority Decision on Action. The convening authority took no action on the findings. *Id.* The record of trial consists of twelve volumes. The transcript is 382 pages. There are two Prosecution Exhibits, 11 Defense Exhibits, and 29 Appellate Exhibits. Appellant is not confined. Counsel has reviewed the entire record and is finalizing the AOE. Barring unforeseen circumstances, Counsel intends to file the AOE this week.

2. *United States v. Cannon*, ACM 40136 – Pursuant to his pleas, Appellant was convicted at a general court-martial by a military judge at Malmstrom AFB, Montana for one charge, two specifications of committing a lewd act upon a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ); and one charge, one specification of attempting to commit a sexual act upon a child, in violation of Article 80, UCMJ. Record (R.) at 255. The judge sentenced Appellant to reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for 18 months, and a dishonorable discharge. R. at 279. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action, 27 April 2021. The record of trial consists of six volumes. The transcript is 280 pages. There are four Prosecution Exhibits, one Defense Exhibit, and 31 Appellate Exhibits. Appellant is not confined for these offenses. Counsel has reviewed the Prosecution, Defense, and Appellate Exhibits. Counsel has also started reviewing the transcript, but has not yet completed it.

3. *United States v. Heard*, ACM 40159 – In accordance with her pleas, Appellant was convicted of wrongful distribution of marijuana, in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charge, two specifications of making a false statement in violation of federal law, in violation of Article 134 UCMJ. R. at 72. The military judge sentenced Appellant to be reduced in grade to E-1, to be confined for 100 days, and to be discharged from the service with a bad conduct discharge characterization. R. at 116. The convening authority took no action on the findings, approved the sentence in its entirety, and dismissed Charge I, Specifications 1 and 2 with prejudice. Record of Trial, Vol. 1, Convening Authority Decision on Action, 17 May 2021. The record of trial consists of two prosecution exhibits, six defense exhibits, and four appellate exhibits. The transcript is 117 pages. Appellant is not currently confined. Counsel has not begun reviewing Appellant's case.

4. *United States v. Tolano*, ACM 40196 – Pursuant to his pleas, Appellant was convicted at a general court-martial by a military judge at Cannon, AFB, New Mexico for one charge and two specifications possessing and distributing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 103. The judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for five years, and to be dishonorably discharged from the service. R. at 153. On 17 August 2021, the convening authority denied Appellant’s request for deferments of the reduction in grade and adjudged forfeitures. Record of Trial, Volume 1, Convening Authority Decision on Action, 17 August 2021. The record of trial consists of six prosecution exhibits, two defense exhibits, and ten appellate exhibits. The transcript is 154 pages. Appellant is currently confined. Counsel has not begun reviewing Appellant’s case.

5. *United States v. Schauer*, ACM 40203 – In accordance with his pleas, Appellant was convicted of wrongful production and possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 59. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 48 months, and to be discharged from the service with a dishonorable service characterization. R. at 83. The convening authority took no actions on the findings and approved the sentence in its entirety. Record of Trial, Vol. 1, Convening Authority Decision on Action, 4 October 2021. The record of trial consists of three volumes, three prosecution exhibits, 11 defense exhibits, one court exhibit, and ten appellate exhibits. The transcript is 84 pages. Appellant is confined. Counsel has not yet reviewed Appellant’s case.

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Spencer R. Nelson', with a stylized flourish at the end.

SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 21 June 2022.

Respectfully submitted,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 S32718
DONIVAN B. DAGAN, 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.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 23 June 2022.

A handwritten signature in black ink, appearing to read "Tom Alford". The signature is written in a cursive, flowing style.

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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

UNITED STATES	)	No. ACM S32718
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Donivan B. DAGAN)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 21 June 2022, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 27th day of June, 2022,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **28 July 2022**.

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 his 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

A handwritten signature in black ink, appearing to read "Anthony F. Rock".

ANTHONY F. ROCK, Maj, 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 (SIXTH)
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3),	)	No. ACM S32718
DONIVAN B. DAGAN,)	
United States Air Force,	)	21 July 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)(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 **27 August 2022**. The record of trial was docketed with this Court on 30 November 2021. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

On 16 August 2021, consistent with his pleas, a military judge in a special court-martial at Kadena Air Base, Japan convicted Appellant of one charge and two specifications of wrongful distribution and use of LSD in violation of Article 112a, Uniform Code of Military Justice. R. at 45. The military judge sentenced appellant to be reduced to E-1, to be confined for 30 days, and to be discharged from the service with a bad conduct service characterization. R. at 65. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action, dated 3 September 2021. The record of trial consists of 100 pages with five prosecution exhibits, seven defense exhibits, and three appellate transcripts. The transcript is 66 pages. Appellant is not confined.



Counsel is currently assigned 18 cases; 9 cases are pending initial AOE's before this Court.

GRANTED

25 JULY 2022

Counsel has a *DuBay* hearing scheduled for 26 July 2022 and two cases pending petitions/supplements to the Court of Appeals for the Armed Forces. Counsel has reviewed the record of trial in its entirety and is finalizing issues to raise with Appellant. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Three cases have priority over the present case:

1. *United States v. Cannon*, ACM 40136 – Pursuant to his pleas, Appellant was convicted at a general court-martial by a military judge at Malmstrom AFB, Montana for one charge, two specifications of committing a lewd act upon a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ); and one charge, one specification of attempting to commit a sexual act upon a child, in violation of Article 80, UCMJ. Record (R.) at 255. The judge sentenced Appellant to reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for 18 months, and a dishonorable discharge. R. at 279. The convening authority took no action on the findings or sentence. Record of Trial, Vol. 1, Convening Authority Decision on Action, 27 April 2021. The record of trial consists of six volumes. The transcript is 280 pages. There are four Prosecution Exhibits, one Defense Exhibit, and 31 Appellate Exhibits. Appellant is not confined for these offenses. Counsel has reviewed the entire record and advised Appellant. Appellant intends to withdraw from appellate review and has mailed his withdrawal paperwork to undersigned counsel for filing.

2. *United States v. Tolano*, ACM 40196 – Pursuant to his pleas, Appellant was convicted at a general court-martial by a military judge at Cannon, AFB, New Mexico for one charge and two specifications possessing and distributing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 103. The judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for five years, and

to be dishonorably discharged from the service. R. at 153. On 17 August 2021, the convening authority denied Appellant's request for deferments of the reduction in grade and adjudged forfeitures. Record of Trial, Volume 1, Convening Authority Decision on Action, 17 August 2021. The record of trial consists of six prosecution exhibits, two defense exhibits, and ten appellate exhibits. The transcript is 154 pages. Appellant is currently confined. Counsel has reviewed the entire case file except for sealed materials. On 20 July 2022, this Court denied Appellant's 14 July 2022 motion to view sealed materials. Appellant filed a new motion to view sealed material on 21 July 2022.

3. *United States v. Schauer*, ACM 40203 – In accordance with his pleas, Appellant was convicted of wrongful production and possession of child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). R. at 59. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 48 months, and to be discharged from the service with a dishonorable service characterization. R. at 83. The convening authority took no actions on the findings and approved the sentence in its entirety. Record of Trial, Vol. 1, Convening Authority Decision on Action, 4 October 2021. The record of trial consists of three volumes, three prosecution exhibits, 11 defense exhibits, one court exhibit, and ten appellate exhibits. The transcript is 84 pages. Appellant is confined. Counsel has reviewed the entire case file except for sealed materials. On 21 July 2022, Appellant filed a motion to view sealed materials (to withdraw and correct previous filing, dated 14 July 2022) which this Court has not yet ruled on.

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

Respectfully submitted,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 21 July 2022.

Respectfully submitted,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4773

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 S32718
DONIVAN B. DAGAN, 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
(240) 612-4800

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 22 July 2022.

A handwritten signature in black ink that reads "Mary Ellen Payne". The signature is written in a cursive, flowing style.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND ATTACH
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM S32718
DONIVAN B. DAGAN)	
United States Air Force	)	27 July 2022
<i>Appellant</i>)	

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

Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Appellant moves to withdraw his case from appellate review. Appellant has fully consulted with Major Spencer Nelson, 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), undersigned counsel asks this Court to attach the two-page document appended to this pleading to the record of this proceeding. The appended document is necessary to comply with R.C.M. 1115(d).

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

Respectfully submitted,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-4773

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 27 July 2022.

Respectfully submitted,



SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-4773

APPENDIX

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 20210908.

I have consulted with Major Spencer Nelson, 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.

DONIVAN B. DAGAN

AIRMAN FIRST CLASS

TYPED NAME OF ACCUSED

RANK OF ACCUSED



24 JUL 22

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.

SPENCER R. NELSON

JAJA

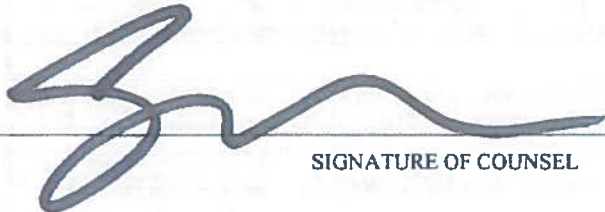
TYPED NAME OF COUNSEL

UNIT OF COUNSEL

MAJOR

RANK OF COUNSEL

BUSINESS ADDRESS (If Civilian Counsel)



SIGNATURE OF COUNSEL

24 July 2022
DATE

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

UNITED STATES	)	No. ACM S32718
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Donivan B. DAGAN)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 27 July 2022, Appellant submitted a Motion to Withdraw from Appellate Review and 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 24 July 2022.

The Government did not file opposition to the motion.

Accordingly, it is by the court on this 1st day of August, 2022,

ORDERED:

Appellant’s Motion to Withdraw from Appellate Review and Attach is **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

A handwritten signature in black ink, appearing to read "Anthony F. Rock".

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