

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. 2
)	
Airman First Class (E-3)	)	No. ACM 40390
TRAVIS I. HOLT,)	
United States Air Force	)	6 February 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)(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 **15 April 2023**. The record of trial was docketed with this Court on 16 December 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,

[Redacted Signature]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[Redacted Contact Information]

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 6 February 2023.

Respectfully submitted,



KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division



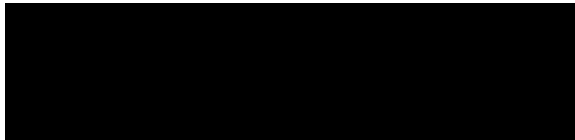
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40390
TRAVIS I. HOLT, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**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.

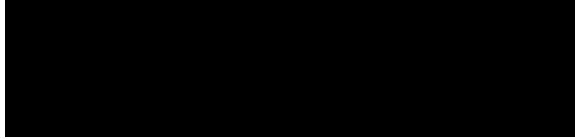


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force

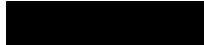


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 7 February 2023.



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
<i>Appellee</i>	)	OF TIME (SECOND)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40390
TRAVIS I. HOLT,)	
United States Air Force	)	7 April 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 an 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 May 2023**. The record of trial was docketed with this Court on 16 December 2022. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 11 August 2022, Appellant was tried by a general court-martial at Joint Base Charleston, South Carolina. In accordance with his pleas and pursuant to a plea agreement, the military judge found Appellant guilty of one charge with two specifications of attempted sexual assault of a child in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880; and one charge with one specification of distribution of child pornography in violation of Article 134, 10 U.S.C. § 934.¹ Record (R.) at 60; Record of Trial (ROT) Vol. 1, Entry of Judgment

¹ Pursuant to the plea agreement, two specifications of attempted sexual abuse of a child involving indecent communication, one specification of attempted sexual abuse of a child involving indecent conduct, one specification of attempting to receive child pornography, and one specification of attempting to possess child pornography, all in violation of Article 80, UCMJ; and one specification of possession of child pornography in violation of Article 134, UCMJ were withdrawn and dismissed with prejudice. R. at 51.



(EOJ), dated 20 September 2022. The military judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 5 years and to be discharged from the service with a dishonorable discharge. R. at 90; EOJ. The convening authority took no action on the findings and approved the sentence in its entirety. ROT Vol. 1, Convening Authority Decision on Action – *United States v. A1C Travis I. Holt*, dated 15 September 2022.

The record of trial is 5 volumes consisting of 6 prosecution exhibits, 1 defense exhibit, 1 court exhibit, and 16 appellate exhibits; the transcript is 91 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors.

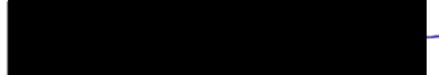

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,


KASEY W. HAWKINS, 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 7 April 2023.


KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


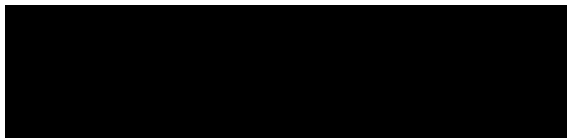
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40390
TRAVIS I. HOLT, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**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.

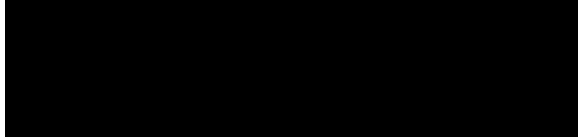


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



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 7 April 2023.



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
<i>Appellee</i>	)	OF TIME (THIRD)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40390
TRAVIS I. HOLT,)	
United States Air Force	)	8 May 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 an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 June 2023**. The record of trial was docketed with this Court on 16 December 2022. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 11 August 2022, Appellant was tried by a general court-martial at Joint Base Charleston, South Carolina. In accordance with his pleas and pursuant to a plea agreement, the military judge found Appellant guilty of one charge with two specifications of attempted sexual assault of a child in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880; and one charge with one specification of distribution of child pornography in violation of Article 134, 10 U.S.C. § 934.¹ Record (R.) at 60; Record of Trial (ROT) Vol. 1, Entry of Judgment

¹ Pursuant to the plea agreement, two specifications of attempted sexual abuse of a child involving indecent communication, one specification of attempted sexual abuse of a child involving indecent conduct, one specification of attempting to receive child pornography, and one specification of attempting to possess child pornography, all in violation of Article 80, UCMJ; and one specification of possession of child pornography in violation of Article 134, UCMJ were withdrawn and dismissed with prejudice. R. at 51.



(EOJ), dated 20 September 2022. The military judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 5 years and to be discharged from the service with a dishonorable discharge. R. at 90; EOJ. The convening authority took no action on the findings and approved the sentence in its entirety. ROT Vol. 1, Convening Authority Decision on Action – *United States v. A1C Travis I. Holt*, dated 15 September 2022.

The record of trial is 5 volumes consisting of 6 prosecution exhibits, 1 defense exhibit, 1 court exhibit, and 16 appellate exhibits; the transcript is 91 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow 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,


KASEY W. HAWKINS, 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 8 May 2023.

[REDACTED]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

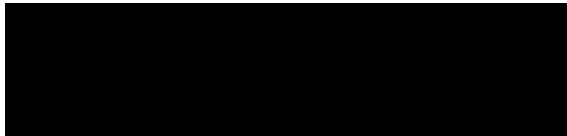
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40390
TRAVIS I. HOLT, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**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.

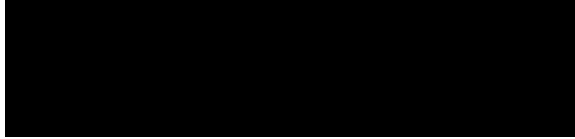


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force



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 May 2023.



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 EXAMINE
<i>Appellee</i>	)	SEALED MATERIALS
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40390
TRAVIS I. HOLT,)	
United States Air Force	)	1 June 2023
<i>Appellant</i>)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves to examine the following sealed materials:

1. Attachments 3 and 4 to Prosecution Exhibit 1. These attachments were reviewed by government and defense counsel and ordered sealed by the military judge. R. at 68.
2. Preliminary Hearing Officer (PHO) Exhibits 3, 4, 5, and 13-23. These attachments were reviewed by government and defense counsel and ordered sealed by the PHO. Record of Trial (ROT) Vol. 5, PHO Report.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these materials is reasonably necessary to appellate counsel’s responsibilities, undersigned counsel asserts that review of the referenced exhibits is necessary to conduct a complete review of the record and to advocate competently on behalf of Appellant. Prosecution Exhibit 1 is a stipulation of fact agreed upon by trial counsel, defense counsel, and Appellant. R. at 19. The military judge relied upon the stipulation to determine whether Appellant was guilty of the offenses to which he pleaded guilty, and to determine an appropriate sentence. R. at 20. Therefore, it is necessary for undersigned counsel to review the attachments to the stipulation to analyze the providency of Appellant’s guilty plea and the appropriateness of his sentence.

Furthermore, a complete review of the PHO exhibits is necessary to ensure Appellant's Preliminary Hearing was conducted correctly and that his case was properly referred to trial.

Moreover, a review of the entire record of trial is necessary because this Court is empowered by Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866, to grant relief based on a review and analysis of "the entire record." To determine whether the record of trial yields grounds for this Court to grant relief under Article 66, UCMJ, appellate defense counsel must, therefore, examine "the entire record."

Although Courts of Criminal Appeals have a broad mandate to review the record unconstrained by an appellant's assignments of error, that broad mandate does not reduce the importance of adequate representation. As we said in *United States v. Ortiz*, 24 M.J. 323, 325 (C.M.A. 1987), independent review is not the same as competent appellate representation.

United States v. May, 47 M.J. 478, 481, (C.A.A.F. 1998). The sealed materials referenced above must be reviewed to ensure undersigned counsel provides "competent appellate representation." *Id.* Accordingly, examination of these exhibits is reasonably necessary since undersigned counsel cannot fulfill her duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing the complete record of trial.

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

Respectfully submitted,

[REDACTED]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[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 1 June 2023.

[REDACTED]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	TO EXAMINE
v.	)	SEALED MATERIAL
)	
Airman First Class (E-3)	)	ACM 40390
TRAVIS I. HOLT, USAF)	
<i>Appellant.</i>	)	Panel No. 2
)	

**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 responds to Appellant's Motion to Examine Sealed Material. The United States does not object to Appellant's counsel reviewing the materials listed in Appellant's motion –which appear to have been available to all parties at trial – so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

The United States would not consent to Appellant's counsel viewing any exhibits that were reviewed in camera but not released to the parties unless this Court has first determined there is good cause for Appellant's counsel to do so under R.C.M. 1113.

WHEREFORE, the United States respectfully responds to Appellant's motion.

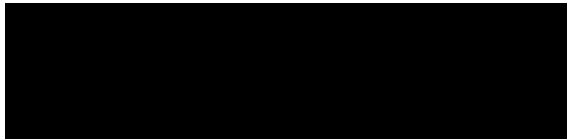


MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
United States Air Force



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 2 June 2023.



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



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

UNITED STATES	)	No. ACM 40390
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Travis I. HOLT)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 1 June 2023, Appellant’s counsel submitted a Motion to Examine Sealed Materials, requesting to examine Attachments 3 and 4 to Prosecution Exhibit 1, and Preliminary Hearing Officer (PHO) Exhibits 3, 4, 5, and 13–23.

Appellant’s counsel avers that viewing the sealed materials is reasonably necessary to fulfill her duty of representation, since counsel cannot perform her duty of representation without first reviewing the complete record of trial.

The Government responded to the motion on 2 June 2023. It does not object to Appellant’s counsel reviewing materials that were released to both parties at trial, as long as the Government can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2019 ed.).

The court finds Appellant has made a colorable showing that review of the sealed materials is reasonably necessary for a proper fulfillment of appellate defense counsel’s responsibilities. This court’s order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 12th day of June, 2023,

ORDERED:

Appellant’s Motion to Examine Sealed Materials is **GRANTED**.

Appellate defense counsel and appellate government counsel may view **Attachments 3 and 4 to Prosecution Exhibit 1, and PHO Exhibits 3, 4, 5, and 13–23**, subject to the following conditions:

To view the sealed materials, counsel will coordinate with the court.

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court's prior written authorization.



FOR THE COURT



[Redacted Signature], Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	BRIEF ON BEHALF OF
<i>Appellee</i>	)	APPELLANT
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40390
TRAVIS I. HOLT,)	
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:**

Assignment of Error

**WHETHER A1C HOLT WAS DENIED EFFECTIVE ASSISTANCE OF
COUNSEL DURING THE POST-TRIAL PHASE OF HIS COURT-
MARTIAL WHEN TRIAL DEFENSE COUNSEL INCORRECTLY
STATED THE LAW TO THE CONVENING AUTHORITY AND
ATTACHED A LETTER FROM A1C HOLT’S PARENTS WHICH
UNDERCUT ANY OPPORTUNITY FOR CLEMENCY?**

Statement of the Case

On 11 August 2022, Appellant, Airman First Class (A1C) Travis I. Holt, was tried by a general court-martial at Joint Base Charleston, South Carolina. In accordance with his pleas and pursuant to a plea agreement, the military judge found Appellant guilty of one charge with two specifications of attempted sexual assault of a child in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880 (2019); and one charge with one specification of distribution of child pornography in violation of Article 134, 10 U.S.C. § 934 (2016).¹ Record

¹ Pursuant to the plea agreement, two specifications of attempted sexual abuse of a child involving indecent communication, one specification of attempted sexual abuse of a child involving indecent conduct, one specification of attempting to receive child pornography, and one specification of attempting to possess child pornography, all in violation of Article 80, UCMJ; and one specification of possession of child pornography in violation of Article 134, UCMJ were withdrawn and dismissed with prejudice. R. at 51.

(R.) at 60; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 20 September 2022. The military judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 5 years and to be discharged from the service with a dishonorable discharge. R. at 90; EOJ. The convening authority took no action on the findings and approved the sentence in its entirety. ROT Vol. 1, Convening Authority Decision on Action – *United States v. A1C Travis I. Holt*, dated 15 September 2022.

Statement of Facts

On 11 August 2022, A1C Holt was provided notice of his right to submit matters to the convening authority for consideration. ROT Vol. 2, Post-Sentencing, Submission of Matters to the Convening Authority – *United States v. A1C Travis I. Holt*, dated 11 August 2022. Capt MC was the defense counsel responsible for post-trial actions in A1C Holt’s case. R. at 89. On 18 August 2022, Capt MC submitted matters on behalf of A1C Holt. ROT Vol. 2, Post-Sentencing, Submission of Matters on Behalf of Airman First Class Travis I. Holt, dated 18 August 2022 [hereinafter Submission of Matters]. The matters state, in pertinent part:

Pursuant to R.C.M. 1109(c)(5), following a General Court-Martial, you may reduce, commute, or suspend, in whole or in part a reprimand, forfeiture of pay or allowances, reduction in pay grade, and/or confinement that does not exceed six months, which does not apply in this case. As such, I request speedy post-trial processing for A1C Holt’s case and any other relief afforded to A1C Holt under the law due to his service to the United States Air Force.

Id. Attached to the matters was a letter from A1C Holt’s parents, which stated, “we believe he deserves the punishment awarded,” and “[h]e did some terrible things.” *Id.* The matters contained no personal submission from A1C Holt.

The convening authority took action on 15 September 2022. ROT Vol. 1, Convening Authority Decision on Action. The convening authority stated he “considered

matters timely submitted by the accused under R.C.M. 1106 and the victim² under R.C.M. 1106A” before coming to his decision. *Id.*

Argument

A1C HOLT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING THE POST-TRIAL PHASE OF HIS COURT-MARTIAL WHEN TRIAL DEFENSE COUNSEL INCORRECTLY STATED THE LAW TO THE CONVENING AUTHORITY AND ATTACHED A LETTER FROM A1C HOLT’S PARENTS WHICH UNDERCUT ANY OPPORTUNITY FOR CLEMENCY.

Standard of Review

The standard of review for claims of post-trial ineffective assistance of counsel is de novo. *United States v. Lee*, 52 M.J. 51, 52 (C.A.A.F. 1999).

Law

“[T]he right of a military accused to effective assistance of counsel after his trial is a fundamental right.” *United States v. Knight*, 53 M.J. 340, 342 (C.A.A.F. 2000) (citing *United States v. Palenius*, 2 M.J. 86 (C.M.A. 1977)). “Counsel are presumed to be competent.” *Lee*, 52 M.J. at 52. “To overcome this presumption, an appellant must show that his counsel was deficient and that the deficiency prejudiced him.” *Id.* (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). The first prong of the *Strickland* test requires the appellant to demonstrate that “counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 688. “If counsel’s post-trial representation is deficient, *Strickland*’s prejudice prong is satisfied if

² The victim’s matters were submitted on 22 August 2022. ROT Vol. 1, Post-Sentencing, Victim Impact Statement of Ms. D.S. The ROT does not contain any receipts showing A1C Holt or his trial defense counsel received the victim’s matters *before* the convening authority took action. *See* ROT Vol. 2, Post-Sentencing (Defense counsel receipted for the victim matters on 31 October 2022, and A1C Holt receipted for the entire ROT on 7 November 2022). While the Government’s failure to serve A1C Holt with the victim’s matters prior to the convening authority’s decision on action was error (*see* R.C.M. 1106A(c)(3)), A1C Holt does not assert any prejudice.

appellant makes a colorable showing of possible prejudice.” *United States v. Poindexter*, No. ARMY 20000594, 2003 CCA LEXIS 322, at *7 (A. Ct. Crim. App. 30 Dec. 2003) (citing *Lee*, 52 M.J. at 53). “[B]ecause of the highly discretionary nature of the convening authority’s clemency power, the threshold for showing prejudice is low.” *Lee*, 52 M.J. at 53. “[T]he convening authority is an appellant’s ‘best hope for sentence relief.’” *United States v. Bischoff*, 74 M.J. 664, 669 (A.F. Ct. Crim. App. 2015) (quoting *United States v. Lee*, 50 M.J. 296, 297 (C.A.A.F. 1999)).

Defense counsel is responsible for tactical post-trial decisions but should consult “with the client where feasible and appropriate” before acting. *Lee*, 52 M.J. at 52 (citing *United States v. MacCulloch*, 40 M.J. 236, 239 (C.A.A.F. 1994)). “Counsel’s duty is to advise, but the final decision as to what, if anything, to submit rests with the accused.” *United States v. Lewis*, 42 M.J. 1, 4 (C.A.A.F. 1995). “Defense counsel may not . . . refuse to submit matters offered by the [accused] or submit matters over the [accused’s] objection.” *United States v. Hood*, 47 M.J. 95, 97 (C.A.A.F. 1997).

Rule for Courts-Martial (R.C.M.) 1109³ applies to A1C Holt’s case because he was convicted of an offense for which the maximum authorized sentence to confinement is more than two years, and because he was sentenced to a dishonorable discharge. R.C.M. 1109(c)(5) provides the convening authority may reduce, commute, or suspend, in whole or in part, the following punishments:

- (A) The confinement portion of a sentence if the sentence to confinement is six months or less;
- (B) a reprimand;
- (C) forfeiture of pay or allowances;
- (D) a fine;

³ All references to the R.C.M. are to the *Manual for Courts-Martial, United States* (2019 ed.).

- (E) reduction in pay grade;
- (F) restriction to specified limits; and
- (G) hard labor without confinement.

Analysis

Trial defense counsel's submission of matters on behalf of A1C Holt was deficient because she misstated the law to the convening authority and attached an unfavorable letter from A1C Holt's parents. A1C Holt was prejudiced by this deficient performance because the submission from trial defense counsel foreclosed any opportunity for clemency.

Trial defense counsel misstated the limitations of R.C.M. 1109(c)(5). Trial defense counsel listed the possible clemency actions the convening authority could take, but then stated, "which does not apply in this case" and "[a]s such, I request speedy post-trial processing for A1C Holt's case and any other relief afforded to A1C Holt under the law due to his service to the United States Air Force." Submission of Matters. While a reasonable interpretation of trial defense counsel's summary of the rule is that her statement "which does not apply in this case" is only applicable to "a sentence to confinement of six months or less," the next sentence calls such an interpretation into question. By only requesting speedy post-trial processing and "any other relief afforded to A1C Holt," it appears trial defense counsel did not believe the convening authority could provide any relief. That is not true—the convening authority could have reduced, commuted, or suspended the reduction in grade and the forfeitures of pay and allowances. Trial defense counsel not only did not request any relief for A1C Holt, but her submission also informed the convening authority that he *could not take* any favorable action.

While the staff judge advocate may have corrected this misunderstanding in their advice to the convening authority, that still does not remedy the problem. Trial defense counsel's



misstatement of the rule meant she did not request the convening authority take *any* favorable action on the sentence. Trial defense counsel, acting on A1C Holt's behalf, could have asked the convening authority to suspend the reduction in grade and/or forfeiture of pay and allowances. She could have asked the convening authority to only reduce A1C Holt to the grade of E-2 or reduce his forfeitures to two-thirds of his pay. These are only a few examples of actions which would have greatly benefited A1C Holt. However, it is extremely unlikely a convening authority would grant clemency without an express request from an accused, thus trial defense counsel's submission foreclosed clemency in this case.

This problematic submission of matters was exacerbated by the letter from A1C Holt's parents, who unequivocally stated he deserved the punishment he received. In *United States v. Gilley*, the Court of Appeals for the Armed Forces (CAAF) found appellant was denied effective assistance of counsel when trial defense counsel submitted "highly inflammatory letters" from appellant's family to the convening authority as part of the clemency request. 56 M.J. 113, 124-25 (C.A.A.F. 2001). The letters contained a "scathing diatribe directed toward trial counsel, trial defense counsel, the members, the judge, and the convening authority." *Id.* at 124. The CAAF found the "contemptuous and abusive" letters "effectively negated any plea for clemency." *Id.* at 125. While A1C Holt's case is different in that the letter from his parents accepts, rather than criticizes, the outcome of his court-martial, the detrimental affect on any chance for sentencing relief is the same. The fact that A1C Holt's own parents—including his 30-year Navy veteran father—believed his sentence was appropriate gave the convening authority ample justification to deny any clemency. As in *Gilley*, it was not reasonable for trial defense counsel to include that information in the submission of matters.

Trial defense counsel's misstatement of the law and inclusion of the letter from A1C Holt's parents denied A1C Holt a meaningful clemency hearing. As in all cases with post-trial errors, this Court "cannot know with certainty what relief, if any, the convening authority might have granted, there is a reasonable probability that" absent these errors, "there would have been a different result." *Gilley*, 56 M.J. at 125. Therefore, A1C Holt was denied effective assistance of counsel in the post-trial phase of his court-martial.

WHEREFORE, Appellant respectfully requests that this Honorable Court disapprove the reduction to E-1 and the total forfeiture of pay and allowances or remand the case for new post-trial processing.

Respectfully submitted,


KASEY W. HAWKINS, 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 22 June 2023.

[REDACTED]

KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division

[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT
<i>Appellee</i>	)	OF TIME (FOURTH)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40390
TRAVIS I. HOLT,)	
United States Air Force	)	7 June 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 an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 July 2023**. The record of trial was docketed with this Court on 16 December 2022. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 11 August 2022, Appellant was tried by a general court-martial at Joint Base Charleston, South Carolina. In accordance with his pleas and pursuant to a plea agreement, the military judge found Appellant guilty of one charge with two specifications of attempted sexual assault of a child in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880; and one charge with one specification of distribution of child pornography in violation of Article 134, 10 U.S.C. § 934.¹ Record (R.) at 60; Record of Trial (ROT) Vol. 1, Entry of Judgment

¹ Pursuant to the plea agreement, two specifications of attempted sexual abuse of a child involving indecent communication, one specification of attempted sexual abuse of a child involving indecent conduct, one specification of attempting to receive child pornography, and one specification of attempting to possess child pornography, all in violation of Article 80, UCMJ; and one specification of possession of child pornography in violation of Article 134, UCMJ were withdrawn and dismissed with prejudice. R. at 51.

(EOJ), dated 20 September 2022. The military judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 5 years and to be discharged from the service with a dishonorable discharge. R. at 90; EOJ. The convening authority took no action on the findings and approved the sentence in its entirety. ROT Vol. 1, Convening Authority Decision on Action – *United States v. A1C Travis I. Holt*, dated 15 September 2022.



The record of trial is five volumes consisting of six prosecution exhibits, one defense exhibit, one court exhibit, and 16 appellate exhibits; the transcript is 91 pages. Appellant is currently confined.

Counsel is currently assigned 20 cases; 12 cases are pending initial AOE's before this Court. This case is undersigned counsel's highest priority before this Court. Undersigned counsel has reviewed the entire record of trial except for the sealed portions. Undersigned counsel filed a motion to examine those sealed portions with this Court on 1 June 2023.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors.

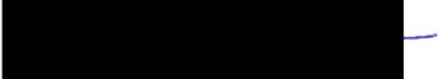

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,


KASEY W. HAWKINS, 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 7 June 2023.


KASEY W. HAWKINS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division


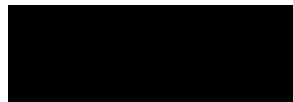
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman First Class (E-3)	)	ACM 40390
TRAVIS I. HOLT, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

**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.

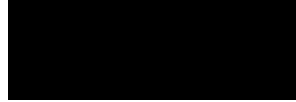


OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

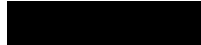


CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 8 June 2023.



OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee</i>	)	UNITED STATES' MOTION TO COMPEL DECLARATION OR AFFIDAVIT
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40390
TRAVIS I. HOLT,)	
United States Air Force	)	30 June 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(e) of this Honorable Court’s Rules of Practice and Procedure, the United States hereby requests this Court compel Appellant’s trial defense counsel, Capt Mary Beth Clemons, to provide an affidavit or declaration in response to Appellant’s allegation of ineffective assistance of counsel (IAC). In his assignments of error, Appellant claims he received ineffective assistance during post-trial clemency. (App. Br. at 1.) Capt Clemons was the trial defense counsel responsible for clemency. (R. at 89.) Specifically, Appellant contends that his counsel incorrectly stated the law to the convening authority during clemency and attached an “unfavorable letter” from Appellant’s parents to the clemency submission. (Id. at 5.)

On 29 June 2023, Appellant’s trial defense counsel responded to undersigned counsel stating that she would only provide an affidavit or declaration by an order by this Court. To prepare an answer under the test set out in United States v. Polk¹, 32 M.J. 150, 153 (C.M.A.

¹ 1) Are Appellant’s allegations true, and if so, “is there a reasonable explanation for counsel’s actions?” 2) If the allegations are true, did defense counsel’s level of advocacy “fall measurably below the performance... [ordinarily expected] of fallible lawyers?” (3) If defense counsel was ineffective, is there “a reasonable probability that, absent the errors,” there would have been a different result?

1991), the United States requests that this Court compel trial defense counsel to provide a declaration or affidavit. A statement from Appellant’s counsel is necessary because the record is insufficient to answer Appellant’s IAC allegations, since it provides no information about trial defense counsel’s strategic decisions as they relate to Appellant’s specific assertion of ineffectiveness. Thus, the United States requires statements from trial defense counsel to adequately respond to Appellant’s brief. *See United States v. Rose*, 68 M.J. 236, 236 (C.A.A.F. 2009); *United States v. Melson*, 66 M.J. 346, 347 (C.A.A.F. 2008). In fact, this Court cannot grant Appellant’s ineffective assistance of counsel claim without first obtaining statements from trial defense counsel. *See Rose*, 68 M.J. at 237; *Melson*, 66 M.J. at 347.

Accordingly, the United States respectfully requests this Court order trial defense counsel to provide a declaration, containing specific and factual responses to Appellant’s allegation of ineffective assistance of counsel, within 30 days of this Court’s order.

[REDACTED]

USAF

Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force

[REDACTED]

[REDACTED]

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

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Appellate
Defense Division on 30 June 2023.



MORGAN R. CHRISTIE, Maj, USAF
Appellate Government Counsel, 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	)	UNITED STATES' MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (FIRST)
)	
v.	)	Before Panel No. 2
)	
Airman First Class (E-3)	)	No. ACM 40390
TRAVIS I. HOLT,)	
United States Air Force	)	30 June 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)(5), the United States respectfully requests that it be given **14 days** after this Court's receipt of a declaration or affidavit from trial defense counsel to submit its answer so that it may incorporate statements provided by Appellant's trial defense counsel in response to the specified ineffective assistance of counsel issue.¹

This case was docketed with the Court on 16 December 2022. Since docketing, Appellant has been granted four (4) enlargements of time. Appellant filed his brief with this Court on 22 June 2023. This is the United States' first request for an enlargement of time. As of the date of this request, 196 days have elapsed since docketing.

There is good cause for the enlargement of time. Appellant has raised one substantial area in which he claims his trial defense counsel were ineffective. (App. Br. at 22.) The United States cannot prepare its answer to the allegations of ineffective assistance of counsel without a statement from the trial defense counsel. An enlargement of time is necessary to ensure trial defense counsel has time to review the allegation before she drafts and submits a statement to the

¹ The United States is filing a motion to compel a declaration or affidavit from Appellant's trial defense counsel contemporaneously with this motion.

Court, and to give the United States sufficient time to incorporate trial defense counsel's statement into its answer. Moreover, additional time is needed for drafting and supervisory review before the United States files its answer.

WHEREFORE, the United States respectfully requests this Honorable Court grant this motion for an enlargement of time.

[REDACTED]

MORGAN R. CHRISTIE, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force

[REDACTED]

[REDACTED]

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

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Appellate Defense Division on 30 June 2023.

[REDACTED]

[REDACTED] USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force

[REDACTED]

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

UNITED STATES	)	No. ACM 40390
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Travis I. HOLT)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 22 June 2023, Appellant, through counsel, submitted an assignments of error brief in which Appellant raises an issue in which he claims his trial defense was ineffective during the post-trial phase for two reasons: (1) counsel incorrectly stated the law to the convening authority; and (2) counsel attached a letter from Appellant’s parents which undercut any opportunity for clemency.

On 30 June 2023, the Government filed a Motion to Compel Declarations and contemporaneously filed a Motion for Enlargement of Time. The Government requests this court compel Appellant’s trial defense counsel, Captain (Capt) Mary Beth Clemons, to provide an affidavit or declaration in response to the claimed ineffective assistance of counsel. According to the Government, Appellant’s trial defense counsel indicated she would only provide an affidavit or declaration upon order by this court. In the Motion for Enlargement of Time, the Government requests 14 days to submit its answer after the court’s receipt of a declaration or affidavit from trial defense counsel. Appellant did not respond to either motion.

The court has examined the claimed deficiencies and finds good cause to compel a response from Appellant’s trial defense counsel with regards to Appellant’s claims. The court cannot fully resolve Appellant’s claims without piercing the privileged communications between Appellant and trial defense counsel. Moreover, in light of the court’s order granting the Government’s Motion to Compel Declarations, it finds good cause to grant the Government’s requested enlargement.

Accordingly, it is by the court on this 14th day of July, 2023,

ORDERED:

The Government’s Motion to Compel Declarations is **GRANTED**. Capt Mary Beth Clem is ordered to provide an affidavit or declaration to the court

that is a specific and factual response to Appellant's claim that trial defense counsel was ineffective.

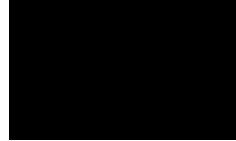
A responsive affidavit or declaration by each counsel will be provided to the court not later than **14 August 2023**. The Government shall also deliver a copy of the responsive affidavits or declarations to Appellant's counsel.

It is further ordered:

The Government's Motion for Enlargement of Time is **GRANTED**. The Government's answer to Appellant's assignments of error brief will be filed not later than **28 August 2023**.



FOR THE COURT



SEAN J. SULLIVAN, Maj, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee,</i>	)	UNITED STATES’ MOTION TO
	)	ATTACH DOCUMENT
v.)	
	)	Before Panel No. 2
Airman First Class (E-3))	
TRAVIS I. HOLT, USAF )	)	No. ACM 40390
<i>Appellant.</i>)	
	)	9 August 2023

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

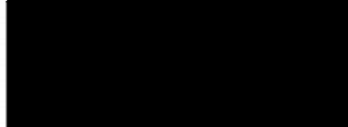
Pursuant to Rule 23.3(b) of this Court’s Rules of Practice and Procedure, the United States moves the Court to attach the following documents to this motion:

- Appendix – Capt Mary E. Clemons Declaration, dated 4 August 2023 (2 pages)

The attached declaration is responsive to this Court’s order directing Capt Mary E. Clemons to provide a declaration responsive to Appellant’s only assignment of error on appeal that his trial defense counsel was ineffective. (*Order*, dated 14 July 2023.) This declaration is necessary to resolve the assignment of error.

Our Superior Court held matters outside the record may be considered “when doing so is necessary for resolving issues raised by materials in the record.” United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020). The Court concluded that “based on experience . . . ‘extra-record fact determinations’ may be ‘necessary predicates to resolving appellate questions.’” Id. at 442 (quoting United States v. Parker, 36 M.J. 269, 272 (C.M.A. 1993)). Accordingly, the attached document is relevant and necessary to address this Court’s order and Appellant’s assignment of error.

WHEREFORE, the United States respectfully requests this Court grant this Motion to Attach the Document.



JOCELYN Q. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



MARY ELLEN PAYNE
Associate Chief
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 Appellate Defense Division on 9 August 2023.



JOCELYN Q. WRIGHT, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee,</i>	)	ANSWER TO ASSIGNMENTS
	)	OF ERROR
v.)	
	)	ACM 40390
Airman First Class (E-3))	
TRAVIS I. HOLT, USAF	)	Panel No. 2
<i>Appellant.</i>)	

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

ISSUE PRESENTED

WHETHER A1C HOLT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING THE POST-TRIAL PHASE OF HIS COURT-MARTIAL WHEN TRIAL DEFENSE COUNSEL INCORRECTLY STATED THE LAW TO THE CONVENING AUTHORITY AND ATTACHED A LETTER FROM A1C HOLT’S PARENTS WHICH UNDERCUT ANY OPPORTUNITY FOR CLEMENCY?

STATEMENT OF THE CASE

The United States generally accepts Appellant’s Statement of the Case.

STATEMENT OF FACTS

Facts necessary to the disposition of this case are discussed in the specific issues below.

ARGUMENT

APPELLANT’S TRIAL DEFENSE COUNSEL WAS NOT INEFFECTIVE.

Standard of Review

Ineffective assistance of counsel claims involve mixed questions of law and fact: “[t]his Court reviews factual findings under a clearly erroneous standard, but looks at the questions of deficient performance and prejudice *de novo*.” United States v. Gutierrez, 66 M.J. 329, 330-331 (C.A.A.F. 2008).

Law

To show ineffective assistance of counsel, “an appellant must demonstrate both (1) that his counsel’s performance was deficient, and (2) that this deficiency resulted in prejudice.” United States v. Green, 68 M.J. 360, 361 (C.A.A.F. 2010) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). In reviewing for ineffectiveness of counsel, the Court addresses issues of performance and prejudice *de novo*. See Gutierrez, 66 M.J. at 330-331 (discussing the test for claims of ineffective assistance of counsel).

With regard to the first prong of Strickland’s two-pronged test, courts give deference to counsel and “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Strickland, 466 U.S. at 689. To establish deficient performance, an appellant must establish his counsel’s representation “amounted to incompetence under ‘prevailing professional norms.’” Harrington v. Richter, 131 S. Ct. 770, 788 (2011) (quoting Strickland, 466 U.S. at 690). Because an ineffective-assistance claim may be used “as a way to escape the rules of waiver and forfeiture and raise issues not presented at trial...the Strickland standard must be applied with scrupulous care, lest ‘intrusive post-trial inquiry’ threaten the integrity of the very adversary process the right to counsel is meant to serve.” Id.

When addressing the second prong, an appellant must demonstrate a “reasonable probability that, but for counsel’s [deficient performance] the result of the proceeding would have been different.” Strickland, 466 U.S. at 694. That is to say, an appellant has the burden of showing the results of the trial would have been different but for the deficiency. See Id., at 694; see also Harrington, 131 S. Ct. at 787-88 (noting the error or deficiency must be so serious that a defendant was deprived of a fair trial with reliable results).

In addressing claims of ineffective assistance of counsel, the Court of Appeals for the Armed Forces applies the following three-part test to determine whether or not the presumption of counsel's competence has been overcome:

1. Are appellant's allegations true; if so, "is there a reasonable explanation for counsel's actions"?
2. If the allegations are true, did defense counsel's level of advocacy "fall measurably below the performance...[ordinarily expected] of fallible lawyers"?
3. If defense counsel was ineffective, is there "a reasonable probability that, absent the errors," there would have been a different result?

United States v. Gooch, 69 M.J. 353, 362 (C.A.A.F. 2011) (citing United States v. Polk, 32 M.J. 150, 153 (C.M.A. 1991)).

In reviewing the decisions and actions of trial defense counsel, a reviewing Court does not second-guess strategic or tactical decisions. *See* United States v. Morgan, 37 M.J. 407, 410 (C.M.A. 1993). It is only in those limited circumstances where a purported "strategic" or "deliberate" decision is unreasonable or based on inadequate investigation that it can provide the foundation for a finding of ineffective assistance. *See* United States v. Davis, 60 M.J. 469, 474 (C.A.A.F. 2005).

In other words, "disagreements as to the strategic or tactical decisions made at the trial level by defense counsel will not support a claim of ineffective assistance of counsel so long as the challenged conduct has some reasoned basis." United States v. Mansfield, 24 M.J. 611, 617 (A.F.C.M.R. 1987). *See also* United States v. McIntosh, 74 M.J. 294, 296 (C.A.A.F. 2015). In assessing claims of ineffective assistance of counsel, appellate courts do not look at the success of a defense attorney's strategy "but rather whether counsel made an objectively reasonable choice in strategy from the alternatives available at the time." United States v. Dewrell, 55 M.J.

131, 136 (C.A.A.F. 2001)(citing United States v. Hughes, 48 M.J. 700, 718 (A.F. Ct. Crim. App. 1998).

Additional Facts

Prior to trial, Capt MC, Appellant's trial defense counsel, assisted Appellant in negotiating a plea agreement that resulted in the following specifications being withdrawn and dismissed: two specifications of attempted sexual abuse of a child involving indecent communication, one specification of attempted sexual abuse of a child involving indecent conduct, one specification of attempting to receive child pornography, and one specification of attempting to possess child pornography, all in violation of Article 80, UCMJ; and one specification of possession of child pornography in violation of Article 134, UCMJ were withdrawn and dismissed with prejudice. (R. at 51.)

At trial, Appellant pled guilty to attempting to intentionally touching the genitalia of a child between the ages of 12 and 16, attempting to penetrated the vulva of a child between the ages of 12 and 16, and distributing an image of child pornography. (ROT, Vol. I.) The plea agreement limited confinement to no less than 3 years and no more than 7 years. The military judge sentenced Appellant to a reduction in the grade to E-1, forfeiture of all pay and allowances, 5 years confinement, and a dishonorable discharge. (R. at 90.)

Following Appellant's trial, Capt MC submitted matters on behalf of Appellant to the Convening Authority. (ROT, Vol. IV.) In an 18 August 2022 memorandum, Capt MC made the following statement:

Pursuant to R.C.M. 1109(c)(5), following a General Court-Martial, you may reduce, commute, or suspend, in whole or in part a reprimand, forfeiture of pay or allowances, reduction in pay grade, and/or confinement that does not exceed six months, which does not apply in this case. As such, I request speedy post-trial processing

for A1C Holt's case and any other relief afforded to A1C Holt under the law due to his service to the United States Air Force.

(Id.)

Included in those matters was a letter from Appellant's parents. The letter stated, in part, as follows:

As his parents, this is extremely difficult sentence for us to process and almost surreal. While we believe he deserves the punishment awarded, we expect that he will receive the mental health treatment and counseling he desperately needs. He did some terrible things, but he is not a malevolent person. We understand his sentence of 5 years may be reduced by 1 year for good behavior. We would also encourage and support a favorable clemency ruling based on positive and total treatment and rehabilitation. Travis knows he needs help as he has told us, so it is clear he will be very receptive to any treatment. He accepted full responsibility and will not initiate any conflict or trouble while in confinement. We are heartbroken and saddened by his actions and the impact to other families. The best outcome for us is for our son to get well and come back to us as soon as feasible after rehabilitation. If he could also learn a new skill during his confinement, we believe he can and will be a positive contribution to society. We will be here upon his release to help him in any way we can.

(Id.)

Analysis

In his brief, Appellant claims Capt MC was ineffective because she "misstated the law to the convening authority and attached an unfavorable letter from [Appellant's] parents." (App. Br. at 5.) Appellant believes he was "prejudiced by this deficient performance because the submission from trial defense counsel foreclosed any opportunity for clemency." (Id.) Appellant is mistaken.

First, Appellant states Capt MC misstated the law in her memorandum because of the "which does not apply in this case" clause detailed above. However, in a declaration submitted to this Court regarding this issue, Capt MC states the "which does not apply in this case" only

references the confinement portion of the sentence due to his sentence being greater than six months,” adding, “I believe I correctly cited the law.” (*See* Dec. of Capt MC.)¹

Still, Appellant claims that even if this clause applied to the confinement portion, Capt MC was still ineffective because she “only request[ed] speedy post-trial processing and ‘any other relief afforded to’” Appellant and that such a statement makes it appear that Capt MC “did not believe the convening authority could provide any relief.” (App. Br. at 5.) Appellant claims this is incorrect because the convening authority could have reduced, commuted, or suspended his reduction in rank or forfeitures.

Capt MC’s declaration refutes these claims, as she explains:

Prior to and following sentencing, I counseled A1C Holt regarding his right to submit matters. As part of that discussion, I informed him the Convening Authority would not be able to reduce his confinement sentence. I also counseled A1C Holt that the Convening Authority could reduce, commute, or suspend, in whole or in part, the reprimand, forfeiture of pay or allowances, and reduction in pay grade he received as part of his sentence. We discussed situations where such actions might be taken, for example, when dependents may be reliant on the finances of the sentenced military member. Understanding A1C Holt’s entire situation, we determined to ask for speedy post-trial processing for A1C Holt’s case and broadly ask for any relief the Convening Authority was willing to give.

(*See* Dec. of Capt MC.) Notably, Capt MC further states that Appellant’s “expressed concern” regarding his post-trial submission of matters was on confinement, not on either his reduction in rank or forfeitures. (*Id.*)

Here, Capt MC did not misstate the law as it related to the convening authority’s clemency powers. Thus, her statement in the memorandum was reasonable, and her representation did not fall measurably below the performance ordinarily expected of fallible

¹ The Government moved to attach Capt MC’s declaration on 9 August 2023. This Honorable Court granted that motion on 18 August 2023.

lawyers. Additionally, even if Capt MC's statement could be misconstrued as being legally incorrect, Appellant acknowledges the staff judge advocate accurately stated all available clemency options to the convening authority, effectively curing any possible misreading of Capt MC's statement.

Furthermore, it is clear from her declaration that Capt MC was well aware of the power the convening authority possessed in clemency. However, due to the circumstances of his case, which involved Appellant distributing child pornography and attempting to have sex and touch the genitalia of a child between the ages of 12 and 16, Capt MC reasonably believed the best course of action for Appellant was to focus on speedy post-trial processing for Appellant's case and to broadly ask for relief. This course of action was especially reasonable considering Appellant's primary post-trial concern was confinement, not his reduction in rank or forfeitures. This course of action was reasonable and did not fall measurably below the performance ordinarily expected of fallible lawyers.

Next, Appellant takes aim at his own parents and the letter they submitted on his behalf in clemency. (App. Br. at 6.) First, in his brief, Appellant elects to surgically carve out only small portions of two sentences from his parent's letter, namely the parts that state, "we believe he deserves the punishment awarded," and "[h]e did some terrible things." (App. Br. at 2.) Yet, in doing so, Appellant misconstrues the entire context of his own parent's attempt to help him. Notably, Appellant fails to inform this Court of the other things his parents said on his behalf, including the following:

- While we believe he deserves the punishment awarded, we expect that he will receive the mental health treatment and counseling that he desperately needs.²

² Appellant quoted the opening clause of this sentence in his brief, but omitted the remainder of the sentence. (See App. Br. at 2.)

- He did some terrible things, but he is not a malevolent person.³
- We understand his sentence of 5 years may be reduced by 1 year for good behavior.
- We would also encourage and support a favorable clemency ruling based on positive and total treatment and rehabilitation.
- Travis knows he needs help as he has told us, so it is clear he will be very receptive to any treatment.
- He accepted full responsibility and will not initiate any conflict or trouble while in confinement.
- The best outcome for us is for our son to get well and come back to us as soon as feasible after rehabilitation.
- If he could also learn a new skill during his confinement, we believe he can and will be a positive contribution to society.
- We will be here upon his release to help him in any way we can.

(ROT, Vol IV.)

Here, Capt MC recognized the beneficial nature of this letter, stating, “His parents discussed A1C Holt’s understanding that he needs rehabilitation, that he is receptive to treatment, and that his family is ready and willing to assist him with his transition back to society after confinement.” (*See* Dec. of Capt MC.) Though his parents did say Appellant’s punishment was just, Capt MC stated she “believed positive aspects of the letter outweighed the negative implications from the comments provided” by Appellant’s parents.

Capt MC is correct. Appellant’s parents talk about very positive aspects for Appellant, including him receiving and being receptive to treatment, his general nature despite his misconduct, his acceptance of responsibility, and how they believe he can still contribute to society with proper rehabilitation while in confinement. They even highlight he will be eligible for good behavior release, which the tone of their letter shows they support. All of these are very

³ Again, Appellant quoted the opening clause of this sentence in his brief, but omitted the remainder of the sentence. (*See* App. Br. at 2.)

positive aspects for Appellant. The fact that Appellant omitted every one of them in his brief is notable, and severely cuts against his claim that his parent's letter had a negative impact on him.

Further, even the two snippets Appellant did quote in his brief are understandable when read in context. Here, the parents, in the same sentence, followed up their belief that Appellant's punishment was deserved by stating that they hope Appellant will receive treatment and counseling which, as they state later, will lead to him being a positive contribution to society in the future. Likewise, while they admit Appellant did "some terrible things," which is likely a view held by all in this case considering Appellant admitted to attempting to have sex with a child and distributing child pornography, Appellant's parents still argue on their son's behalf by contending that he is "not a malevolent person."

When read as a whole, as opposed to just two snippets from two sentences, this letter shows Appellant's parents love and support him and truly believe he can overcome his misconduct by receiving counseling, treatment, and learning new skills in confinement. While Appellant attempts to equate these letters to being "highly inflammatory,"⁴ a full reading of the letters shows the opposite. Capt MC's inclusion of this letter in Appellant's clemency package, especially considering Appellant's expressed wish that the package include a letter from his mother,⁵ is reasonable and did not fall measurably below the performance ordinarily expected of fallible lawyers.

Finally, Appellant suffered no prejudice. Considering the nature of Appellant's crimes, there was no reasonable probability of the convening authority either reducing, suspending, or commuting Appellant's reduction in rank or forfeitures. Notably, Appellant makes no attempt to

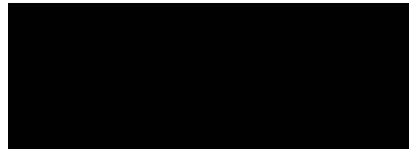
⁴ See App. Br. at 6.

⁵ In her declaration, Capt MC explains that Appellant "A1C Holt wanted a letter written by his mother to be included, if she was willing to write one." (See Dec. of Capt MC.)

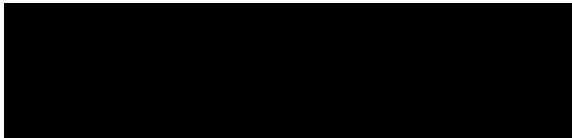
argue why, despite Capt MC's statement of his parent's letter, the convening authority should or would have provided him reduction in rank or forfeiture relief. Thus, Appellant's claim must fail.

CONCLUSION

WHEREFORE, this Court should deny Appellant's claims and affirm the findings and sentence.



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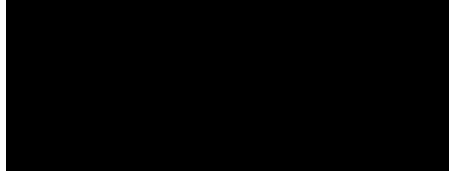


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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 28 August 2023 via electronic filing.



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