UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM S32782**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chanson A. JOHNSON	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 10 July 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 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 12th day of July, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **18 September 2024**.

Each request for an enlargement of time will be considered on its merits. Appellant's counsel is advised that any subsequent motions for enlargement of time, shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 1
Master Sergeant (E-7) **CHANSON A. JOHNSON,** United States Air Force, *Appellant.*	)	No. ACM S32782 10 July 2024

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Master Sergeant (MSgt) Chanson A. Johnson, Appellant, hereby moves for an enlargement of time to file assignments of error. MSgt Johnson requests an enlargement for a period of 60 days, which will end on **18 September 2024**. The record of trial was docketed with this Court on 21 May 2024. From the date of docketing to the present date, 50 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 10 July 2024.

[redacted]

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11 July 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) CHANSON A. JOHNSON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM S32782 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.

[redacted]
BRITTANY M. SPEIRS, Maj, USAFR
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 11 July 2024.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 1
Master Sergeant (MSgt) **CHANSON A. JOHNSON** United States Air Force *Appellant*	)	No. ACM S32782 20 September 2024

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

Assignments of Error

I.

WHETHER THE POST-TRIAL PROCESSING OF MSGT JOHNSON'S CASE WAS IMPROPERLY COMPLETED WHEN THE STAFF JUDGE ADVOCATE FOUND 18 U.S.C. § 922 APPLIED TO MSGT JOHNSON'S CONVICTION OF A NON-VIOLENT OFFENSE.

II. [1]

WHETHER THE SENTENCE IS INAPPROPRIATELY SEVERE.

Statement of the Case

On 9 April 2024, at Eielson Air Force Base, Alaska, a special court-martial composed of a military judge alone convicted Appellant, Master Sergeant (MSgt) Chanson A. Johnson, consistent with his plea, of one charge and specification of divers use of methamphetamine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a. R. at 38. The military judge sentenced MSgt Johnson to be reprimanded, reduction in rank to E-4, confinement for thirty days, and a bad-conduct discharge. R. at 77. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action (CADA),

[1] Assignment of Error (AOE) II is raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

22 April 2024.

Statement of Facts

MSgt Johnson's use of methamphetamine was limited to two uses within a sixty-day window in 2022. R. at 22-23; DD Form 428, *Charge Sheet* (DD Form 428). MSgt Johnson used methamphetamine at his house after a civilian friend gave him the drugs. R. at 22. The facts surrounding the two times he described using methamphetamine were devoid of any violence, and he used drugs to forget about mental health symptoms stemming from combat trauma. R. at 22-27, 63; Def. Ex. C; Pros. Ex. 1.

MSgt Johnson was first notified he would be prohibited from owning a firearm pursuant to 18 U.S.C. § 922 when served the Statement of Trial Results (STR) and first indorsement. STR, 9 April 2024. The first indorsement to the Entry of Judgement (EOJ) was signed by the Staff Judge Advocate after the EOJ was signed by the military judge and contained the same notation. EOJ, 24 April 2024. Neither of these documents state which provision of 18 U.S.C. § 922 applies to MSgt Johnson.

Argument

I.

THE POST-TRIAL PROCESSING OF MSGT JOHNSON'S CASE WAS IMPROPERLY COMPLETED WHEN THE STAFF JUDGE ADVOCATE FOUND 18 U.S.C. § 922 APPLIED TO MSGT JOHNSON'S CONVICTION OF A NON-VIOLENT OFFENSE.

Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004) (citations omitted). To prevail in a post-trial processing claim, an appellant must establish that there was an error and that the error resulted in prejudice. *United States v. Blodgett*, 20 M.J. 756, 758 (A.F.C.M.R. 1985); *see*

also Article 66(d)(2), 10 U.S.C. § 866(d)(2) (authorizing relief for error or excessive delay in processing after the EOJ). "There must be a colorable showing of possible prejudice in terms of how the omission potentially affected an appellant's opportunity for clemency." *United States v. Scalo*, 60 M.J. 435, 437 (C.A.A.F. 2005).

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

Law and Analysis

1. Courts of Criminal Appeals (CCAs) have authority to review whether the post-trial processing of a case was completed correctly.

Both the STR and the EOJ must contain "[a]ny additional information . . . required under regulations prescribed by the Secretary concerned." R.C.M. 1101(a)(6), 1111(b)(3)(F). Under Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, dated 24 January 2024, ¶ 20.6, 20.41, and 29.32, the SJA must determine whether the offenses trigger a prohibition under § 922 and include the information in the first indorsement to both the STR and EOJ. Completion of both the STR and EOJ are under the heading "Post-Trial Procedure" in the MCM. *Manual for Courts-Martial, United States* (2024 ed.) pt. II. Using the plain meaning of the language of R.C.M. 1101(a)(6) and 1111(b)(3)(F), alongside the requirements to include whether an offense triggers a prohibition under § 922 within the Department of the Air Force's regulation, the first endorsement to the STR and EOJ are part of the post-trial processing of a case, one prior to the EOJ and one after the EOJ is signed by the military judge.

Given the STR and EOJ are post-trial issues, a CCA's authority to review the accuracy of the indorsements to those documents is not limited by the fact that the STR and EOJ are not part of the findings and sentence under Article 66(d)(1)(A). *United States v. Williams*, __ M.J.

__, No. 24-0015/AR, 2024 CAAF LEXIS 501, at *12-13 (C.A.A.F. 5 Sep. 2024). Rather, as this Court and other courts have done previously, whether the STR and EOJ are accurate is reviewable is a part of the service CCA's authority to review the record for proper completion of post-trial processing. *See* R.C.M. 1112(b)(7) and (9) (where the STR and EOJ are part of the certified record of trial); R.C.M. 1112(d)(2) (where correction can be ordered to make the certified record accurate); Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3) (where the CCA determines additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue); 10 U.S.C. § 866(d)(2).

Viewing the STR and EOJ as part of the post-trial process is consistent with this Court's actions to correct the CADA, the STR, and EOJ. Under the realm of assuring post-trial processing was properly completed, this Court remanded a case to ensure the EOJ accurately reflected an appellant's pleas and findings. *United States v. Graves*, No. ACM 40340, 2023 CCA LEXIS 356, at *8-9 (A.F. Ct. Crim. App. 23 Aug. 2023). In doing so, this Court had authority to correct errors in the EOJ pursuant to R.C.M. 1112(c)(2) and (d)(2) (which allows a CCA to modify a judgment—to correct an incomplete or defective record of trial—in the performance of their duties and responsibilities). *Id.* at *6. This Court also noted it could remand the case to the Chief Trial Judge of the Air Force Trial Judiciary, who has been delegated authority to modify EOJs in accordance with R.C.M. 1111(c)(2)-(3). *Id.* at *6-7. Additionally, this Court has returned the record to the convening authority for new post-trial processing when the CADA did not clearly show the convening authority's intent on the requested action on a reduction in grade and the action by the convening authority on the adjudged reduction was not reflected in the EOJ. *United States v. Jones*, No. ACM S32717, 2022 CCA LEXIS 652, at *4. (A.F. Ct. Crim. App. 7 Nov. 2022). The military judge was

empowered to take several steps, including correcting or modifying the EOJ. *Id.* Not only does *Jones* show that this Court can return the record to a military judge to modify an EOJ, this Court can review whether the decision by a convening authority is accurately reflected in the record of trial. Using *Jones* as a parallel to the facts of this case, MSgt Johnson is asking this Court to return the record to a military judge to correct the error in the STR and EOJ to ensure both documents accurately reflect the determination of the Staff Judge Advocate as it relates to whether § 922 is triggered. As outlined *infra*, there is question of whether § 922 can lawfully be applied to MSgt Johnson's conviction.

Not only has this Court remanded to fix errors in the CADA and in the EOJ, this Court has also returned a case to a military judge when it was unclear if the convening authority was given proper advice from the SJA, in that the convening authority did not take action on the sentence as required due to changes to the law. *United States v. Finco*, No. ACM S32603, 2020 CCA LEXIS 246, at *14-17 (A.F. Ct. Crim. App. 27 Jul. 2020). In MSgt Johnson's case, whether § 922 is applicable to MSgt Johnson's conviction for a non-violent offense falls within this review of post-trial processing errors. R.C.M. 1101(a)(6); R.C.M. 1111(b)(3)(F); *see* DAFI 51-201 ¶ 29.32 (requiring § 922 denotation attached to the STR and EOJ). Just when the advice an SJA gives errant advice before a convening authority before action, *Finco*, 2020 CCA LEXIS 246 at *14-17, when an SJA makes an error in the endorsement to the STR and EOJ, the post-trial processing of a case is rendered inaccurate.

Because the Department of the Air Force has chosen to make the applicability of § 922 a mandatory part of both the STR and EOJ under the applicable R.C.M., this decision is reviewable because the correctness of the STR and EOJ as a part of the certified record of trial

is reviewable. MSgt Johnson is asking this Court to order correction of the errors in the record of trial—the indorsements to the STR and EOJ—which contain a firearms prohibition in error.

Even if this Court does not agree that these are avenues through which to correct the deficient indorsements to the STR and EOJ, Article 66(d)(2) provides a solid jurisdictional foundation. By the plain language of that statute, the error in the first indorsement to the EOJ concerning 18 U.S.C. § 922 is an "error . . . in the processing of the court-martial after the [EOJ]," 10 U.S.C. § 66(d)(2), because the fist indorsement and its application of the firearms ban from 18 U.S.C. § 922 arises "after the [EOJ] from R.C.M. 1111(b)(3)(F)'s incorporation of DAFI 51-201 ¶ 20.41. This was not foreclosed by the Court of Appeals for the Armed Forces in *Williams*, 2024 CAAF LEXIS 501, at *13-15. Likewise, this accords with this Court's published opinion in *United States v. Vanzant*, 84 M.J. 671, 2024 CCA LEXIS 215 (A.F. Ct. Crim. App. 2024). In *Vanzant*, this Court determined it did not have authority to act on collateral consequences because they are not a part of the findings or sentence under Article 66(d)(1), UCMJ. *Id*. at *23. ("Article 66(d), UCMJ, provides that a CCA 'may act only with respect to the findings and sentence as entered into the record under [Article 60c, UCMJ, 10 U.S.C. § 860c].'"). The Court of Appeals for the Armed Forces (CAAF) agreed with this interpretation. *Williams*, 2024 CAAF LEXIS 501, at *11-13. However, MSgt Johnson is asking this Court to review an error in post-trial processing under Article 66(d)(2), UCMJ, which this Court did not analyze in *Vanzant*. *See Vanzant*, 84 M.J. 671, 2024 CCA LEXIS 215, at *23 (quoting the language of Article 66(d)(1), UCMJ, not (d)(2)). At minimum, in light of the CAAF's analysis in *Williams*, this Court should reexamine its jurisdiction and the unconstitutional, post-trial processing error concerning firearms tied to the facts of MSgt Johnson's court-martial.

2. The Staff Judge Advocate erroneously found 18 U.S.C. § 922 applied to MSgt Johnson.

Nothing in MSgt Johnson's record of trial indicates his conviction qualifies as one of the nine categories listed in 18 U.S.C. § 922(g)(1)-(9).

The test for applying the Second Amendment is as follows:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 24 (2022) (citation omitted). The Second Amendment plainly covers MSgt Johnson's right to keep and bear arms post-conviction. Thus, the Government must justify its regulation as applied to MSgt Johnson. However, the Government does not specify which category it applied to MSgt Johnson's conviction. EOJ. Even if a category does apply to MSgt Johnson, he was not convicted of a violent offense. Its application in the STR and EOJ was therefore error and warrants correction pursuant to this Court's authority discussed above.

a. 18 U.S.C. § 922(g)(1) cannot apply to MSgt Johnson's conviction at a special court-martial.

Of the nine categories within § 922(g), the only two that could possibly apply to MSgt Johnson are § 922(g)(1) and § 922(g)(3). 18 U.S.C. § 922(g)(1) cannot apply to MSgt Johnson as he was not "convicted in any court of, a crime punishable by imprisonment for a term exceeding one year." The plain language of 18 U.S.C. § 922(g)(1) requires a crime be punishable by imprisonment exceeding one year. At special court-martial, *no crime* can be punished by over a year in confinement. 10 U.S.C. § 819(a). The UCMJ modifies the application of 18 U.S.C. § 922 because what constitutes a conviction of a "crime punishable by

imprisonment for a term exceeding 1 year" is "determined in accordance with the law of the jurisdiction in which the proceedings were held." 27 C.F.R. 478.11; 18 U.S.C. § 921(20). Since MSgt Johnson was tried at a special court-martial, his conviction does not trigger the 'felony' firearms prohibition. *See* DAFI 51-201, ¶ 29.30.1.1.

b. 18 U.S.C. § 922(g)(3) cannot apply to MSgt Johnson based solely on past drug use.

MSgt Johnson also does not qualify as an "unlawful drug user" under 18 U.S.C. § 922(g)(3). The Fifth Circuit has found that § 922(g)(3)—which bars firearm possession for unlawful drug users or addicts—is unconstitutional. *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), *vacated* (U.S. 2 Jul. 2024) (remanded for further consideration in light of *United States v. Rahimi*, 602 U.S. ___, 144 S. Ct. 1889 (2024)). In finding § 922(g)(3) unconstitutional, the Fifth Circuit's bottom line was:

> [O]ur history and tradition may support some limits on an intoxicated person's right to carry a weapon, but it does not justify disarming a sober citizen based exclusively on his past drug usage. Nor do more generalized traditions of disarming dangerous persons support this restriction on nonviolent drug users.

Id. The Fifth Circuit reaffirmed this idea, applying the standard set forth by *Rahimi*, and found that the § 922(g)(3) limitation on the right to bear arms cannot constitutionally apply to a sober person based solely on past substance use nor can it be constitutionally applied to a nonviolent occasional drug user who is of sound mind. *United States v. Connelly*, __ F. 4th ___, 2024 U.S. App. LEXIS 21866, *2 (5th Cir. 2024). In applying *Rahimi*, the Fifth Circuit found that the historical analogues for regulating firearms for the mentally ill, for regulating dangerous individuals, and intoxication laws do not apply to a nonviolent occasional drug user. *Connelly*, 2024 U.S. App. LEXIS 21866 at *8. The court also noted that occasional drug use does not predispose one to armed conflict, especially when there is no history of drug-related violence. *Id.* at *18. Thus, the § 922(g)(3) limitations were unconstitutional as applied to a sober person

who was an occasional non-violent drug user. This analysis, as applied to MSgt Johnson, leads to the same result. MSgt Johnson's use was non-violent, Pros. Ex. 1; R. at 22-27, and occasional use of drugs should not restrict his right to bear arms as a sober person.

c. *No provision of 18 U.S.C. § 922(g) can apply to MSgt Johnson's conviction for a non-violent offense.*

Regardless of whether any provision is implicated by the facts alone, an issue on the applicability of § 922 remains—MSgt Johnson was convicted of a non-violent offense. *See* R. at 22-27, 38. To prevail in light of *Bruen* and *Rahimi*, the Government has to show a historical tradition of applying an undifferentiated ban on firearm possession for those convicted of a non-violent offense. The Supreme Court's decision in *Rahimi* solidified the place for firearms bans within the realm of violent offenders and crimes of violence. *Rahimi*, 144 S. Ct. 1889. The historical analysis of whether breaking a domestic violence restraining order was a crime of violence to initiate the restriction was supported by the proposition that when "an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at 1901.

The historical analogue breaks down when applied to MSgt Johnson's private, non-violent drug use. In *Rahimi*, the Court noted that the "surety" and "going armed laws" which supported a restriction involved "whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at 1902. By contrast, MSgt Johnson's conviction never involved a threat, with a weapon or otherwise. Pros. Ex. 1, R. at 22-27. Additionally, the Supreme Court itself noted the limited nature of its holding in *Rahimi*. As the Supreme Court stated, "We conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Id.* at 1903. Such a narrow holding cannot support the restriction encompassed

here when there is no indicate of the duration of nor under which provision MSgt Johnson faces a restriction in his right to bear arms for his non-violent offense.

Looking at the provisions of § 922(g) in light of *Daniels, Connelly*, and *Rahimi*, the Government would have to show a historical tradition of applying a ban on firearm possession for non-violent past drug use as a basis to restrict the sober person's access to firearms. The Government fails to meet that burden. The Government cannot establish the constitutionality of the § 922 limitations for a two-time, non-violent use of methamphetamine at home. Therefore, applying any provision under § 922 to MSgt Johnson is unconstitutional given the lack of correlation between MSgt Johnson's conduct and the Nation's historical tradition of firearm regulation tethered to regulating violent offenders.

3. MSgt Johnson established a colorable showing of prejudice when the Government unlawfully restricted his right to bear arms.

There must be a colorable showing of possible prejudice to garner relief for post-trial processing errors. *United States v. Taylor*, 60 M.J. 190, 195 (C.A.A.F. 2004). This requires the appellant to articulate the possible prejudice—what, if anything, would have been different if the post-trial processing error had not occurred. *See United States v. Robinson*, No. ACM, 2020 CCA LEXIS 121, at * 8-9 (N-M. Ct. Crim. App. 16 Apr. 2020). Similarly, this Court has found there was no colorable showing of possible prejudice when the appellant did not demonstrate what she would have done differently or how the error could have impacted the convening authority's decision. *United States v. Harrington*, No. ACM 39112, 2017 CCA LEXIS 748, *14-15 (A.F. Ct. Crim. App. 6 Dec. 2017).

Using these cases as a guide, when the error in the STR and EOJ restricts a constitutionally protected right, there is more than enough to meet the low threshold of possible prejudice. This is unlike errors which have no correlated impact as analyzed above. The nature

of 18 U.S.C. § 922 itself demonstrates prejudice – as applied to MSgt Johnson it is an as-yet unreviewable restriction of his right to bear arms, and one that may run for his lifetime. There is no administrative avenue for relief for MSgt Johnson within the Air Force, the jurisdiction which determined § 922 applied to his conviction. *See* Air Force Manual (AFMAN) 71-102, *Air Force Criminal Indexing*, dated Jul. 21, 2020, Chapter 9 (revealing no "expungement" or "correction" process for erroneous firearm bans. Consequently, the only way to correct this constitutional deprivation of rights is through the court system.

The Staff Judge Advocate's application of § 922 to MSgt Johnson's non-violent drug use conviction was plain and obvious error that rendered his post-trial processing incorrect. An as-yet unreviewable potential lifetime restriction on MSgt Johnson's right to keep and bear arms establishes more than a colorable showing of possible prejudice. As such, this Court can and should remand this case to the military judge to correct the post-trial processing errors in the STR and EOJ to reflect no provision of § 922 is applicable to his conviction.

WHEREFORE, MSgt Johnson respectfully requests this Honorable Court remand this case to the Air Force Trial Judiciary to order correction of the post-trial processing of MSgt Johnson's case by ensuring the STR and EOJ, to include the indorsements thereto, accurately reflect that § 922 does not apply to his conviction.

Respectfully submitted,

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APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), MSgt Johnson, through appellate defense counsel, personally requests that this Court consider the following matter:

II.

MSGT JOHNSON'S SENTENCE IS INAPPROPRIATELY SEVERE.

Additional Facts

MSgt Johnson served in combat on four separate occasions from 2003 through 2010, once in Kyrgyzstan, twice in Iraq, and once in Afghanistan. Pros. Ex. 2. He spent his career in Security Forces. Pros. Ex. 3. The military judge sentenced MSgt Johnson to the maximum punishment allowed under the plea agreement, which included a mandatory bad-conduct discharge. App. Ex. V at 2; R. at 77.

The Government's evidence properly admitted in aggravation was limited. In addition to one LOR for failing to provide a urine sample in April 2022, the Government offered multiple pieces of uncharged misconduct within the Stipulation of Fact, including a confession to civilian law enforcement about drug use and possession of drug paraphernalia in 2023, and evidence of MSgt Johnson being absent without leave the week of the court-martial. Prox. Ex. 4, Pros. Ex. 1, ¶ 13 and 14. However, the military judge ruled the facts in paragraphs 13 and 14 of Prosecution Exhibit 1 were not proper matters in aggravation and he did not consider them in crafting a sentence. R. at 77. Additionally, the military judge found testimony from two members of MSgt Johnson's unit leadership— C.H. and C.S.—on the amount of time the unit spent dealing with MSgt Johnson's misconduct similarly not proper matters in aggravation and did not consider that testimony in crafting a sentence. *Id*.

Standard of Review

Sentence appropriateness is reviewed *de novo*. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law and Analysis

This Court "may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as [it] finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). Considerations include "the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Fields*, 74 M.J. 619, 625 (A.F. Ct. Crim. App. 2015) (quoting *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006)). "The breadth of the power granted to the Courts of Criminal Appeals to review a case for sentence appropriateness is one of the unique and longstanding features of the [UCMJ]." *United States v. Hutchison*, 57 M.J. 231, 233 (C.A.A.F. 2002) (citations omitted). This Court's role in reviewing sentences under Article 66(d) is to "do justice," as distinguished from the discretionary power of the convening authority to grant mercy. *See United States v. Boone*, 49 M.J. 187, 192 (C.A.A.F. 1998).

In determining whether a sentence should be approved, the Court's authority is "not legality alone, but legality limited by appropriateness." *United States v. Atkins*, 23 C.M.R. 301, 303 (C.M.A. 1957). In reviewing whether the adjudged punishment here is appropriate, there are three reasons this Court should reassess the sentence. First, MSgt Johnson's drug use and the circumstances surrounding it are not particularly aggravating. Second, the matters in extenuation

warrant relief from the sentence. Third, there is minimal support for the punitive separation adjudged in accordance with the plea agreement.

MSgt Johnson's sentence is inappropriately severe in light of the nature of the offense of which he was convicted and the limited matters in aggravation. In terms of the offense itself, MSgt Johnson used methamphetamine at home on two occasions during the charged timeframe. R. at 22. In terms of matters in aggravation, the stipulation of fact offers no admissible evidence in aggravation, other than the drug testing levels themselves. Pros. Ex. 1. That is because several pieces of evidence that were offered and admitted were not ultimately considered by the military judge. The military judge ruled MSgt Johnson's conduct in 2023 and 2024 were not proper matters in aggravation. R. at 77. The testimony of C.H. and C.S. was also excluded. *Id.* The military judge found their testimony on the amount of time the unit spent addressing MSgt Johnson's misconduct were not proper matters in aggravation. *Id.* Attachment 5 to Prosecution Exhibit 1 is a video of the content the military judge excluded from paragraph 13 of the stipulation of fact, thus, that attachment similarly does not support the sentence. Without those pieces of evidence, the Government had little to offer in terms of aggravation or from his service record. MSgt Johnson had one letter of reprimand from April 2022 which related to failure to provide a urine sample. Pros. Ex. 4. That LOR, as a matter from the service record, goes to MSgt Johnson's rehabilitative potential, and cannot support the punitive separation. A punitive separation is a tool designed to appropriately characterize an accused's service, which is not appropriate for MSgt Johnson and this conviction given the nature of his use, the limited impact of his drug use, and his otherwise years of largely untarnished service.

Given the lack of matters in aggravation, granting relief from this sentence is also consistent with this Court's duties to approve only so much of the sentence that is correct in law

and fact. While this Court has declined to find a sentence too severe when the circumstances of the crime are aggravating, conversely, this Court has granted relief when the circumstances of the crime are not "particularly aggravating." *Compare United States v. Flores*, No. ACM 40294, 2023 CCA LEXIS 165, at *18 (A.F. Ct. Crim. App. 13 Apr. 2023), *aff'd*, 84 M.J. 277 (C.A.A.F. 2024)), *with United States v. Douglas*, No. ACM 40324, 2024 CCA LEXIS 254, at *10, (A.F. Ct. Crim. App. 27 Jun. 2024). Like *Douglas*, given the lack of any matters that are particularly aggravating, relief is warranted.

Second, matters in mitigation and extenuation support relief. This offense occurred in the context of unaddressed mental health issues stemming from trauma. R. at 63. MSgt Johnson served fifteen years on active duty, and in that time as a security forces troop, was deployed four times in combat—twice in Iraq and once in Afghanistan. Pros. Ex. 2, Pros. Ex. 3. Moreover, MSgt Johnson accepted responsibility for his conduct and pled guilty. Looking at MSgt Johnson's record of service, and the matters in mitigation and extenuation, relief is warranted to ensure the sentence is correct in law and fact. *See* 10 U.S.C. § 866(d)(1); *Fields*, 74 M.J. at 625.

Third, there is minimal evidence within the record to support the punitive separation. The military judge did not hear argument from either party as to why a bad-conduct discharge would be appropriate based on the facts admitted at trial. R. at 71, 73-74. That is because the bad-conduct discharge was mandatory as a condition of the plea agreement. App. Ex. V. However, despite being a term of the plea agreement, in reviewing the sentence, this Court must still find the punitive separation is warranted based on the nature and circumstances of the offense, and in considering who MSgt Johnson is and his service. R.C.M. 1002(c); Article 66(d)(1), UCMJ. Given the record in this case, and despite this mandatory provision with the plea agreement, this Court may still conduct the analysis of whether the sentence that included the punitive separation is too severe.

That is because the terms of a plea agreement are only one consideration in determining the appropriateness of a sentence, and a sentence within the range of a plea agreement may still be inappropriately severe. *See Fields*, 74 M.J. at 626. This Court's authority to review a case for sentence appropriateness "reflects the unique history and attributes of the military justice system, [and] includes, but is not limited to, considerations of uniformity and evenhandedness of sentencing decisions." *United States v. Sothen*, 54 M.J. 294, 296 (C.A.A.F. 2001) (citations omitted).

Reassessment is proper given the need for uniformity and even-handedness in sentencing, and considering MSgt Johnson, the nature and comparative seriousness of this two-time use of methamphetamine at home as he sought to cope with duty-caused mental health trauma, and MSgt Johnson's years of creditable service, including multiple tours in combat. *See Sothen*, 54 M.J. at 296; *Fields*, 74 M.J. at 625. Reassessing the sentence will not negate the seriousness of the offense MSgt Johnson committed, but it will ensure the sentence is no more severe than warranted by the entire record of trial and consistent with justice.

WHEREFORE, MSgt Johnson respectfully requests this Honorable Court reassess the sentence.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 20 September 2024.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 1
Master Sergeant (E-7) **CHANSON A. JOHNSON** United States Air Force *Appellant.*	)	No. ACM S32782 21 October 2024

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

ISSUES PRESENTED

I.

WHETHER THE POST-TRIAL PROCESSING OF APPELLANT'S CASE WAS IMPROPERLY COMPLETED WHEN THE STAFF JUDGE ADVOCATE FOUND 18 U.S.C. § 922 APPLIED TO MSGT JOHNSON'S CONVICTION OF A NON-VIOLENT OFFENSE.

II.[1]

APPELLANT'S SENTENCE IS INAPPROPRIATELY SEVERE.

STATEMENT OF CASE

The United States generally agrees with Appellant's statement of the case.

[1] Appellant raised Assignment of Error II pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

STATEMENT OF FACTS

Appellant's Drug Use

Appellant used methamphetamine on "two or more occasions" at his residence in North Pole, Alaska. (R. at 22.) Appellant was on active duty Title 10 orders and subject to the UCMJ while he used methamphetamine. (Pros. Ex. 1 at 1; R. at 22.) Appellant was aware that methamphetamine was illegal, and he did not have a medical justification for abusing this controlled substance. (R. at 22.) A friend gave Appellant methamphetamine. (Id.) Appellant knew it was methamphetamine because it was white and looked like powder. (Id.) Appellant told the military judge during his Care[2] inquiry that prior to his admitted uses, he has seen methamphetamine before, and that is why Appellant knew that he ingested methamphetamine. (R. at 24.) He used the drug each time by smoking it through a pipe, known as a bong. (R. at 22.) During each use Appellant inhaled the drug about five times. (Id.) Appellant felt the effects of the drug that altered his mental state and "inebriated" him. (Id.) He also acknowledged that he tested positive for methamphetamine as a result of his uranalysis samples administered on 7 August 2022, 24 August 2022, and 27 September 2022. (R. at 23.) Appellant affirmed that no one forced him to use methamphetamine, and he could have avoided using the drugs if he wanted to. (R. at 26.)

[2] United States v. Care, 40 C.M.R. 247 (C.M.A. 1969) (requiring the military judge to make a finding that the accused made a knowing, intelligent, and a conscious waiver to accept the guilty plea).

Appellant's Plea Agreement

Appellant entered into a plea agreement with the convening authority. (App. Ex. V.) In exchange for his plea of guilty for the single charge and specification in violation of Article 112a, UCMJ, Appellant received a limitation on punishment. Per the plea agreement, the court-martial could enter a sentence with the following limitations:

> A minimum of no reduction in rank and maximum of reduction in rank to the grade of E-4;
>
> A Bad Conduct Discharge with a minimum of 0 days and maximum of 30 days confinement;
>
> Six days of confinement credit shall be credited;
>
> The government will not prefer additional charges against the accused for any misconduct that they are aware of at the time this offer is signed by the Convening Authority. This includes any incident from 3 April 2024 and any results of the 2 April 2024 drug tests.

(App. Ex. V. at 2.) Absent the plea agreement, the maximum punishment authorized by law was reduction to the rank of E-1, two-thirds forfeiture of pay per month for 12 months, 12 months of confinement, and a bad conduct discharge. (R. at 28.) The military judge discussed the mandatory bad conduct discharge provision with Appellant. (R. at 34.) Appellant indicated that he understood that a bad conduct discharge would adversely stigmatize the characterization of his military service and limit his future opportunities and benefits from the Department of Veterans Affairs. (R. at 34-35.) Importantly, Appellant understood the ramifications of a bad conduct discharge and the ramifications when he agreed to such a sentence in exchange for the benefits outlined in his plea agreement, such as a limitation on confinement. (R. at 35.)

ARGUMENT

I.

APPELLANT'S POST-TRIAL PROCESSING WAS NOT IMPROPERLY COMPLETED WHEN THE STAFF JUDGE ADVOCATE CORRECTLY FOUND THAT 18 U.S.C. 922 APPLIED TO APPELLANT'S CONVICTION FOR DRUG USE.

Additional Facts

The Staff Judge Advocate's first indorsement to the Statement of Trial Results (STR) and Entry of Judgment (EOJ) in Appellant's case contains the following statement: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (*Statement of Trial Results*, 9 April 2024, ROT, Vol. 1; *Entry of Judgment*, 29 April 2024, ROT, Vol. 1.)

Standard of Review

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

Law and Analysis

This Court "***may*** provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial ***after*** the judgment was entered into the record under section 860c of this title[.]" 10 U.S.C. § 866 (emphasis added). The military judge enters the court-martial judgment into the record via the EOJ 10 U.S.C. § 860c. The EOJ includes the STR. Id. The STR contains: (1) "each plea and finding;" (2) "the sentence, if any; and" (3) "such other information as the President may prescribe by regulation." 10 U.S.C. § 860. The President prescribed that "[a]ny additional information directed by the military judge or required under regulations prescribed by the Secretary concerned" may be added to the STR. R.C.M.

1101(a)(6). An annotation on the STR notifying the Appellant of an 18 U.S.C. § 922 firearms prohibition constituted "other information" as required by R.C.M. 1101(a)(6). United States v. Williams, 2024 CAAF LEXIS 501, *12-13 (C.A.A.F. 5 September 2024).

Following the President's instructions in R.C.M. 1101(a)(6), the Secretary of the Air Force requires a First Indorsement to be attached to the STR. Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, para. 20.6 (dated 24 January 2024). On the STR, the SJA must annotate whether "firearm prohibitions are triggered." Id. "In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA." DAFI 51-201, para. 29.32.

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

This Court recently held in its published opinion in United States v. Vanzant, 84 M.J. 671 (A.F. Ct. Crim. App. 28 May 2024), that 18 U.S.C. § 922(g)'s firearm prohibitions and the criminal indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence, so they are beyond the scope of this Court's jurisdiction under Article 66, UCMJ. Id. at 681.

B. The § 922 annotation was entered into the record before the judgment of the court was entered via the EOJ. Thus, this Court does not have jurisdiction to review Appellant's claim under Article 66(d)(2).

Contrary to Appellant's assertion, Article 66(d)(2) does not grant this Court authority to provide relief under this assignment of error. Article 66(d)(2) does not apply to Appellant's case because the 18 U.S.C. § 922 annotation on the first indorsement of the STR and incorporated into the EOJ was neither an error nor did it occur after the judgment was entered on the record. "Article 66(d)(2), UCMJ, only authorizes a [Court of Criminal Appeals] to provide relief when

there has been an 'error or excessive delay in the processing of the court-martial." United States v. Williams, 2024 CAAF LEXIS 501, *14 (C.A.A.F. 5 September 2024). In Williams, the Court of Appeals for the Armed Forces (CAAF) pointed to three statutory conditions that must be met before a Court of Criminal Appeals (CCA) may review a post-trial processing error under Article 66(d)(2). Id. at *14. First, an error must have occurred. Id. Second, an appellant must raise a post-trial processing error with the CCA. Id. Third, the error must have occurred after the judgment was entered. Id.

The 18 U.S.C. § 922 annotation on the first indorsement of the STR is attached to the STR as "other information" under R.C.M. 1101(a)(6), and then both the other information and the STR are entered into the record. 10 U.S.C. § 860(1)(C). Then the EOJ is entered into the record – after the STR. The EOJ is "the judgment of the court" cited in Article 66(d)(2). *Compare* 10 U.S.C. § 866 *with* 10 U.S.C. § 860c. Because the STR and the first indorsement are entered into the record before the judgment is entered into the record under Article 60c, the § 922 annotation on the first endorsement is not an error occurring "***after*** the judgment was entered into the record." 10 U.S.C. § 866 (emphasis added). They are entered into the record again and simultaneously with the EOJ. Because they are entered again simultaneously with the judgment of the court via the EOJ they are not errors occurring after the judgment is entered into the record. 10 U.S.C. § 860c. Thus, Article 66(d)(2) does not grant this Court jurisdiction to review § 922 annotation on either the STR or the EOJ.

Appellant argues that this Court could correct the First Indorsement to the EOJ because it is attached to the EOJ after the military judge signs it. (App. Br. at 5-6.) But a correction to the EOJ's First Indorsement would be a pyrrhic victory. Even if AFCCA had authority to remove the firearms prohibition annotation from the First Indorsement to EOJ (*Entry of Judgment*, 29

April 2024, ROT, Vol. 1), it could not remove the firearms annotation from the STR that was incorporated into the EOJ (Id.) because that annotation on the STR occurred before the EOJ was entered into the record. Thus, Appellant would remain in the same situation he is in now – having a firearms prohibition annotated on the EOJ. Since this Court's intervention under Article 66(d)(2) would not provide meaningful relief, this Court should deny Appellant's claim.

Appellant argues that the CCA has authority to review whether post-trial processing of a case was completed correctly and because the STR and EOJ are post-trial issues, the CCA can review the accuracy of the indorsements to the STR. (App. Br. at 3.) But R.C.M.s 1101(e) and 1111(c)(3) only allow a CCA to modify and STR or EOJ "in the performance of their duties and responsibilities." Since per Article 66(d)(1) and (2), the CCA's "duties" include only acting with respect to the finding and sentence in the EOJ and correcting processing errors *after* the EOJ, the CCA has no additional authority to correct the STR or EOJ independent of Article 66(d).

C. <u>The § 922 annotation was not an error because it accurately notified Appellant that his conviction triggered the firearms prohibition under federal law.</u>

Regardless of whether 18 U.S.C. § 922(g)(1) applied to Appellant's case, 18 U.S.C. § 922(g)(3) applied because Appellant was convicted of diverse use of a controlled substance. DAFI 51-201, para, 29.30.3.1 (citing 27 C.F.R. 478.11). Thus, annotation on the first indorsement of the STR and incorporated into the EOJ was not an error because it accurately stated that the firearm prohibition applied to Appellant in accordance with federal law. 18 U.S.C. § 922(g)(3). For the crimes to which Appellant pleaded guilty, he admitted to using methamphetamine "on two or more occasions." (R. at 25.) The military judge convicted Appellant of these offense and sentenced Appellant in accordance with the plea agreement. (*Entry of Judgement*, dated 29 April 2024, ROT, Vol. 1.)

Appellant relies on United States v. Connelly, __ F.4th __, 2024 U.S. App. LEXIS 21866 (5th Cir. 2024) for the proposition that 18 U.S.C. § 922(g)(3) is unconstitutional as applied to him. Connelly held that section 922(g)(3) was facially constitutional because there are situations in which there is a valid reason to ban intoxicated persons from carrying weapons. Id. at *26-27. In Connelly, the defendant was found guilty of marijuana use and the evidence did not support disarming a sober person based on her substance use. Id. at *2-3. In contrast, Appellant was convicted of using methamphetamine. In fact, he pleaded guilty of using methamphetamine on two or more occasions at his residence demonstrating that even under Connelly there was a valid reason for banning Appellant, an intoxicated person, from carrying a firearm. In any event, Connelly is not binding on this Court, and other jurisdictions have found section 922(g)(3) constitutional to methamphetamine users. United States v. Morales-Lopez, 92 F.4th 936 (10th Cir. 2024); United States v. Two Hearts, 32 F.4th 659 (8th Cir. 2024).

Appellant argues section 922(g)(3) was unconstitutionally applied to him as a sober person. (App. Br. at 8-9). But occasional drug use does not end the inquiry. Section 922(g)(3) delineates between an unlawful user and someone who is addicted to any controlled substance. Here, Appellant was an unlawful user of a controlled substance and therefore section 922(g)(3) is clear in that it applies to Appellant's misconduct. Indexing under 18 U.S.C. § 922(g)(3) for use of a controlled substance is only for one year after sentencing. Air Force Manual 71-102, *Air Force Criminal Indexing*, para. 4.3.3.1, 4.3.3.6. (21 Jul. 2020). The limited nature of this restriction further supports that this provision is constitutional.

Appellant's convictions triggered the firearm prohibition under 18 U.S.C. § 922. The first indorsement to the STR that was incorporated into the EOJ included the following annotation: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (*Entry of Judgement,*

29 April 2024, ROT, Vol. 1.) The first indorsement to the STR accurately reflected that per federal law, Appellant cannot possess a firearm. 18 U.S.C. § 922(g). The annotation was not erroneous. Even if this Court is authorized to review this issue, it should deny this assignment of error.

II.[3]

APPELLANT'S SENTENCE IS NOT INAPPROPRIATELY SEVERE.

Additional Facts

The military judge adjudged the following sentence: a reprimand, reduction in grade to the grade of E-4, confinement for 30 days, and a bad conduct discharge. (R. at 77.)

Standard of Review

This Court reviews sentence appropriateness de novo. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006). The Court should affirm the sentence if it finds the sentence to be "correct in law and fact and determines, on the basis of the entire record, [it] should be approved." Article 66(d)(1), UCMJ.

Law and Analysis

The appropriateness of a sentence is assessed "by considering the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." United States v. Bare, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006). Unlike the act of bestowing mercy through clemency, which was delegated to other hands by Congress, Courts of Criminal Appeals are entrusted with the task of determining sentence

[3] Appellant raised Assignment of Error II pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

appropriateness, thereby ensuring the accused gets the punishment he deserves. United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988).

This Court has recognized the use of aggravating circumstances in sentencing to inform the "sentencing authority regarding the charged offense and 'putting appellant's offenses into context.'" United States v. Tanner, ACM 39301, 2019 CCA LEXIS 43, at *5 (A.F. Ct. Crim. App. 5 Feb. 2019) (unpub. op.) (quoting United States v. Nourse, 55 M.J. 229, 232 (C.A.A.F. 2011)). Appellant's sentence should "fit the offender" and his convictions. United States v. Mack, 9 M.J. 300, 317 (C.M.A. 1980) (citations omitted).

Appellant's sentence is not inappropriately severe. Rather, his sentence fits his crimes and the finding of guilt. This Court should affirm Appellant's sentence as a reasonable consequence of pleading guilty to divers use of methamphetamine. (*Entry of Judgment*, 29 April 2024, ROT, Vol. 1.)

Appellant argues that his sentence is "inappropriately severe in light of the nature of the offense of which he was convicted and the limited matters in aggravation." (App. Br. Appendix at 3.) Appellant fails to recognize aggravating factors surrounding his criminal drug use. First, he was a senior non-commissioned officer who recognized methamphetamine when his friend offered him the drugs. (R. at 22.) Appellant knew it was unlawful to use the controlled substance, but still made the deliberate choice to smoke methamphetamine by using a bong. (R. at 22.) This was not experimental use in light of Appellant's multiple uses. In fact, Appellant admitted that he used drugs on more than two occasions. (R. at 22.) Appellant had the opportunity to correct his misjudgments and stop using drugs. Appellant admitted that he used methamphetamine even after his first urinalysis scheduled on 2 August 2022. Had Appellant been mindful of his actions, knowing that methamphetamine was illegal, he could have stopped

abusing drugs and perhaps not have tested positive on three separate occasions. In Appellant's unsworn statement, he referenced past duty assignments that had an emotional impact on him. (R. at 63.) Appellant initially used alcohol as a coping mechanism, and when alcohol was not enough, he turned to something "much stronger to deal" with the pain - methamphetamine. (Id.) Appellant understood the serious nature of methamphetamine and its "addictive nature." (Id.) Yet, he deliberately chose to use methamphetamine – each time taking about 5 hits. (R. at 22.)

Moreover, Appellant was on notice that as a member in the Air Force he would have to provide a urine sample. In April 2022, Appellant did not provide a urine sample when directed to and received a letter of reprimand. (Pros. Ex. 1 at 1.) In August 2022, within a week of being put on Title 10 orders, he tested positive for methamphetamine. (Pros. Ex. 1 at 1-2.) The military judge did consider the letter of reprimand as a matter in aggravation.[4] Although Appellant knew that as a member of the Air Force, he should not have abused drugs, he nevertheless made the deliberate choice to use drugs multiple times. This was not an experimental or accidental drug ingestion. Appellant knew what methamphetamine was and used it. Appellant, with over 18 years of service, knew better than to use drugs, but did so anyways. This was not a situation in which there was minimal aggravating evidence.

Appellant primarily argues that there is minimal evidence within the record to support his punitive discharge, and therefore the punitive separation was too severe. (App. Br. Appendix at 4.) As discussed, Appellant's crimes warranted a bad conduct discharge given the matters in aggravation. Importantly, Appellant agreed that the military judge was free to adjudicate a bad-conduct discharge when he accepted a plea agreement with a provision requiring the military

[4] The military judge did not consider other events, after the charge time frame, as matters in aggravation. (R. at 77.)

judge to adjudge a bad-conduct discharge. (R. 34-35; App. Ex. V.) Even if no plea agreement were in place, the military judge could still have adjudicated a bad conduct discharge at a special court-martial. Without his plea agreement, Appellant could have been exposed up to 12 years of confinement. By entering into the plea agreement, Appellant received his end of the bargain and had limitations on confinement – maximum 30 days of confinement with 6 days of confinement credit. The plea agreement shaved 11 months of possible confinement. Appellant's willingness to enter into a plea agreement and its sentencing terms was indicative of an appropriate sentence. This Court has recognized that a plea agreement with the convening authority is "some indication of the fairness and appropriateness of [an appellant's] sentence." United States v. Perez, ACM S32637 (f rev), 2021 CCA Lexis 501 at *7 (A.F. Ct. Crim. App. 28 September 2021) (unpub. op).

Appellant is requesting this Court to essentially grant mercy which it cannot do. Appellant's bad conduct discharge is correct in law. Given the nature of Appellant's crimes, along with his plea agreement, a bad conduct discharge is not inappropriately severe. This Court should deny this assignment of error.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's assignments of error and affirm the findings and sentence in this case.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 21 October 2024.

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