

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS



UNITED STATES	)	<b>MOTION FOR ENLARGEMENT</b>
	)	<b>OF TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (SrA)	)	No. ACM S32745
<b>JACOB A. OLLISON</b>	)	
United States Air Force	)	23 February 2023
	)	
	)	

**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 the first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **3 May 2023**. The record of trial was docketed with this Court on 3 January 2023. From the date of docketing to the present date, 51 days have elapsed. On the date requested, 120 days will have elapsed.

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


Respectfully submitted,

  
ALEXANDRA K. FLESZAR, 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 23 February 2023.

Respectfully submitted,

  
ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



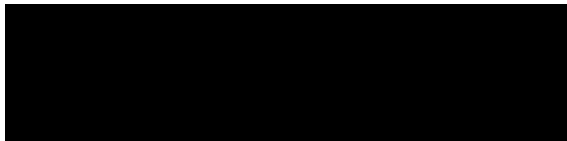
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32745
JACOB A. OLLISON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

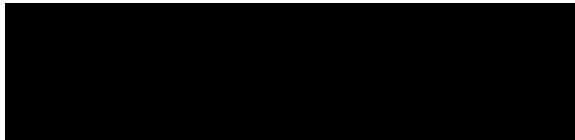


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 24 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT</b>
<i>Appellee</i>	)	<b>OF TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (SrA)	)	No. ACM S32745
<b>JACOB A. OLLISON</b>	)	
United States Air Force	)	26 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 Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **2 June 2023**. The record of trial was docketed with this Court on 3 January 2023. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 25 October 2022 at Altus Air Force Base, Oklahoma, Appellant was tried and convicted, in accordance with his pleas, of one charge and specification of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at Vol. 1, Entry of Judgement in the Case of *United States v. SrA Jacob A. Ollison*, dated 30 November 2022. The military judge sentenced Appellant to confinement for one month, reduction to E-1, and a bad conduct discharge. *Id.* The convening authority took no action on the findings or sentence in the case. R. at Vol. 1, Convening Authority Decision on Action – *United States v. SrA Jacob A. Ollison*, undated.

The record of trial consists of three prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 142 pages. Appellant is not confined.

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




ALEXANDRA K. FLESZAR, 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 Air Force Trial and Appellate Government Operations Division on 26 April 2023.

Respectfully submitted,

  
ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



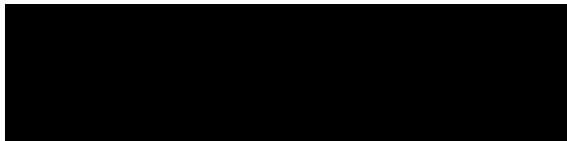
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32745
JACOB A. OLLISON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

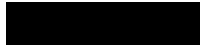
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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



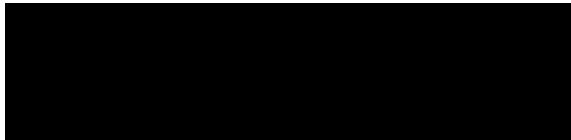
MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force





**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 27 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT</b>
<i>Appellee</i>	)	<b>OF TIME (THIRD)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (SrA)	)	No. ACM S32745
<b>JACOB A. OLLISON</b>	)	
United States Air Force	)	23 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 Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **2 July 2023**. The record of trial was docketed with this Court on 3 January 2023. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

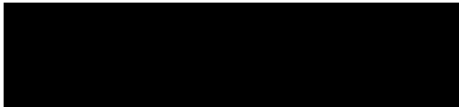
On 25 October 2022 at Altus Air Force Base, Oklahoma, Appellant was tried and convicted, in accordance with his pleas, of one charge and specification of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at Vol. 1, Entry of Judgement in the Case of *United States v. SrA Jacob A. Ollison*, dated 30 November 2022. The military judge sentenced Appellant to confinement for one month, reduction to E-1, and a bad conduct discharge. *Id.* The convening authority took no action on the findings or sentence in the case. R. at Vol. 1, Convening Authority Decision on Action – *United States v. SrA Jacob A. Ollison*, undated.

The record of trial consists of three prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 142 pages. Appellant is not confined.

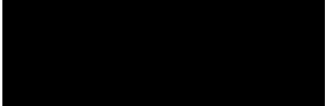
Through no fault of Appellant's, Maj Fleszar has been working on other assigned matters and has not yet started her review of Appellant's case. Maj Fleszar will be commencing terminal leave on 1 June 2023 and will be unable to complete review of the case prior to terminal leave. Maj Bosner has just been assigned as new counsel for Appellant, and has similarly not yet started review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to 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,



ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division




DAVID L. BOSNER, 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 Air Force Trial and Appellate Government Operations Division on 23 May 2023.

Respectfully submitted,

  
ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



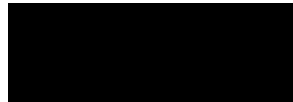
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32745
JACOB A. OLLISON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

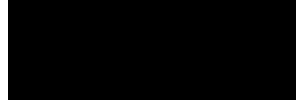


OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**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 23 May 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR WITHDRAWAL</b>
<i>Appellee,</i>	)	<b>OF APPELLATE DEFENSE</b>
	)	<b>COUNSEL</b>
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
<b>JACOB A. OLLISON</b>	)	No. ACM S32745
United States Air Force	)	
<i>Appellant</i>	)	23 May 2023

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. Maj David L. Bosner has been detailed substitute counsel in undersigned counsel's stead. A thorough turnover of the record between counsel has been completed.

Undersigned counsel will be separating from Active Duty with the United States Air Force effective 21 August 2023. Undersigned counsel's terminal leave begins on 1 June 2023. Undersigned counsel has accepted a position as an attorney with the United States Department of Justice which begins 20 June 2023.

If undersigned counsel were to remain as counsel on the case, it would be her fifth priority. Her first priority is a Supplement to the Petition for Grant of Review before the Court of Appeals for the Armed Forces in *United States v. Rodriguez*, ACM No. 40218, with a ROT consisting of four volumes, seven motions, three prosecution exhibits, one defense exhibit, and a 70-page transcript, due 30 May 2023.

Her second priority is a Reply to the Government's Answer in *United States v. Lee*, ACM No. 40258, with the Government's Answer due on 26 May 2023 and the Reply due on 2 June 2023. In this case, the record of trial consists of five prosecution exhibits, eleven defense exhibits, and twenty-four appellate exhibits; the transcript is 595 pages. These priorities will take undersigned counsel to commencement of her terminal leave. Through no fault of Appellant's, undersigned counsel has been working on other assigned matters and has not yet started review of Appellant's case.

Though undersigned counsel is in the process of transferring to the United States Air Force Reserves, her scroll currently remains pending. In any event, she would be unable to begin her Reserve service until 22 August 2023. Given the location of Appellant's case in undersigned counsel's docket, undersigned counsel's impending separation from the Active Duty Air Force, and her existing caseload, it is in Appellant's best interest that undersigned counsel be permitted to withdraw and that he be represented by Maj David L. Bosner. Maj Bosner expects his assignment with the Appellate Defense Division to continue through at least September 2023. He will continue to represent Appellant and file all motions and briefs as necessary.

Appellant has been advised of this motion to withdraw as counsel and consents to undersigned counsel's withdrawal. A copy of this motion will be delivered to Appellant following its filing.



**WHEREFORE**, undersigned counsel respectfully requests that this Honorable Court grant this motion.

Respectfully submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

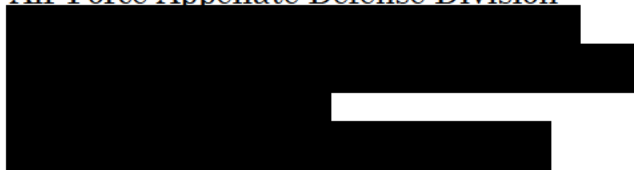
**CERTIFICATE OF FILING AND SERVICE**

I certify that the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 23 May 2023.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of the sender.

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

A large solid black rectangular redaction box covering the contact information, including phone and email details.

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

**UNITED STATES,**

*Appellee,*

v.

Senior Airman (E-4),

**JACOB A. OLLISON,**

United States Air Force,

*Appellant.*

**NOTICE OF APPEARANCE**

Before Panel No. 1


No. ACM S32745

31 May 2023

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

Pursuant to Rules 12 and 13 of this Honorable Court's Rules of Practice and Procedure, the undersigned, an attorney admitted to practice before this Court, hereby enters his appearance as the appellate counsel for the appellant in the above-captioned case.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Appellate Government Division on 31 May 2023.



DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



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

<b>UNITED STATES,</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee,</i>	)	<b>TIME (FOURTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4),	)	No. ACM S32745
<b>JACOB A. OLLISON,</b>	)	
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:**

Pursuant to Rule 23.3(m)(3) and 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **1 August 2023**. The record of trial was docketed with this Court on 3 January 2023. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 25 October 2022, Appellant was tried by a special court-martial composed of a military judge alone at Altus Air Force Base, Oklahoma. Consistent with his pleas, Appellant was convicted of one charge and one specification of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ). Record (R.) at 12, 40. The military judge sentenced Appellant to reduction to E-1, confinement for one month, and a bad conduct discharge. R. at 142.

The record of trial consists of two volumes. The transcript is 142 pages. There are three Prosecution Exhibits, one Defense Exhibit, and nine Appellate Exhibits. Appellant is not confined.

Counsel is currently assigned 33 cases; 13 cases are pending initial AOE’s before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and yet to complete review of Appellant’s case. Accordingly, an enlargement of time is necessary

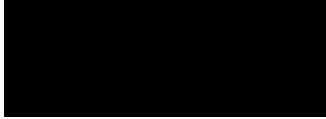
to fully review Appellant's case and advise Appellant regarding potential issues. Six cases have priority over the present case:

1. *United States v. Smith*, ACM 40202: The appellant's petition for grant of review is due to the Court of Appeals for the Armed Forces on 29 June 2023.
2. *United States v. McLeod*, ACM 40374: The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits, two Defense Exhibits, and 38 Appellate Exhibits. Counsel is reviewing the record.
3. *United States v. Gause-Radke*, ACM 40343: Counsel filed the Brief on Behalf of Appellant on 7 June 2023 and expect to reply in July 2023.
4. *United States v. Daddario*, ACM 40351: Counsel filed the Brief on Behalf of Appellant on 7 June 2023 and expect to reply in July 2023.
5. *United States v. Daughma*, ACM 40385: The record of trial consists of 18 Prosecution Exhibits, five Defense Exhibits, 64 Appellate Exhibits, and one Court Exhibit. The transcript is 841 pages. Counsel is reviewing the record.
6. *United States v. Hernandez*, ACM 40287: The appellant's petition for grant of review is due to the Court of Appeals for the Armed Forces on 13 August 2023.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 22 June 2023.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



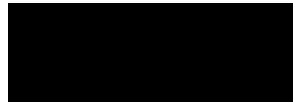
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32745
JACOB A. OLLISON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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



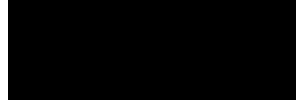
OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force





**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 23 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**

<b>UNITED STATES,</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee,</i>	)	<b>TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4),	)	No. ACM S32745
<b>JACOB A. OLLISON,</b>	)	
United States Air Force,	)	25 July 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 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **31 August 2023**. The record of trial was docketed with this Court on 3 January 2023. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 25 October 2022, Appellant was tried by a special court-martial composed of a military judge alone at Altus Air Force Base, Oklahoma. Consistent with his pleas, Appellant was convicted of one charge and one specification of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ). Record (R.) at 12, 40. The military judge sentenced Appellant to reduction to E-1, confinement for one month, and a bad conduct discharge. R. at 142.

The record of trial consists of two volumes. The transcript is 142 pages. There are three Prosecution Exhibits, one Defense Exhibit, and nine Appellate Exhibits. Appellant is not confined.

Counsel is currently assigned 38 cases; 18 cases are pending initial AOE’s before this Court. Through no fault of Appellant’s, undersigned counsel has been working on other assigned matters and has not yet completed review of Appellant’s case. Accordingly, an enlargement of time is

necessary to allow undersigned counsel to review Appellant's case and advise Appellant regarding potential errors. In full disclosure to the Court, it is likely undersigned counsel will not get this AOE brief filed with this Court before his upcoming reassignment, at which time the case will be transferred to a new attorney. At least six cases have priority over the present case:

1. *United States v. Leipart*, ACM 39711, Misc. Dkt. No. 2021-03: The CAAF granted review on 20 July 2023. The Brief on Behalf of Appellant is due on 21 August 2023.
2. *United States v. Martinez*, ACM 39973: After the CAAF's decision in *United States v. Anderson*, \_\_ M.J. \_\_, 2023 CAAF LEXIS 439 (C.A.A.F. 29 Jun. 2023), counsel is preparing a consolidated petition for a writ of certiorari to file at the Supreme Court of the United States.
3. *United States v. Thompson*, ACM 40019 (rem): The appellant's supplement to the petition for grant of review is due to the CAAF on 2 August 2023.
4. *United States v. Daddario*, ACM 40351: Counsel will draft a reply brief for this Court in August 2023.
5. *United States v. Nestor*, ACM 40250: The appellant's petition for grant of review is due to the CAAF on 29 August 2023.
6. *United States v. Daughma*, ACM 40385: The record of trial consists of 18 Prosecution Exhibits, five Defense Exhibits, 64 Appellate Exhibits, and one Court Exhibit.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



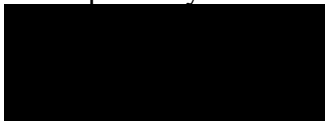
DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 25 July 2023.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



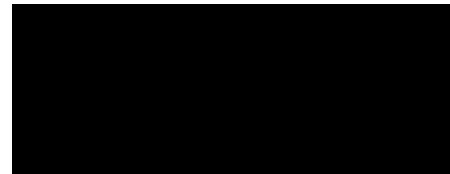
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32745
JACOB A. OLLISON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force

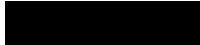


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 26 July 2023.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

UNITED STATES	)	No. ACM S32745
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Jacob A. OLLISON	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 25 July 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 26th day of July, 2023,


**ORDERED:**

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **31 August 2023**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court's Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was advised of the request for an enlargement of time, and (3) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT

  
FLEMING E. KEEFE, Capt, USAF  
Acting Clerk of the Court

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (SIXTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32745
<b>JACOB A. OLLISON,</b>	)	
United States Air Force	)	23 August 2023
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 September 2023**. The record of trial was docketed with this Court on 3 January 2023. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

After Appellant’s last motion for an enlargement of time, undersigned appellate defense counsel was detailed to this case on 25 July 2023 due to the upcoming permanent change of assignment of Appellant’s previous appellate defense counsel, Maj David Bosner, effective 5 September 2023. Additional time is necessary for undersigned counsel to familiarize himself with the case in order to competently advise Appellant. Maj Bosner filed a motion for withdrawal of appellate defense counsel on 22 August 2023.

On 25 October 2022, Appellant was tried by a special court-martial composed of a military judge alone at Altus Air Force Base, Oklahoma. Consistent with his pleas, Appellant was convicted of one charge and one specification of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 921. Record (R.) at 12, 40; Record of Trial (ROT)



Vol. 1, Entry of Judgment dated 30 November 2022 (EOJ). The military judge sentenced Appellant to reduction to E-1, confinement for one month, and a bad conduct discharge. R. at 142; EOJ. The convening authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SrA Jacob Ollison*, undated.

The record of trial is two volumes consisting of three prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 142 pages. Appellant is not currently confined. Undersigned counsel has reviewed more than three-quarters of the record of trial in this case.

Counsel is currently representing 27 clients; ten clients are pending initial AOE's before this Court. Two cases have priority over this case:

- 1) *United States v. Driskill*, ACM 39889 (f rev), USCA No. 23-0066/AF – The record of trial is 14 volumes consisting of 17 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2062 pages. Undersigned counsel is preparing to present oral argument in this case to the U.S. Court of Appeals for the Armed Forces on 25 October 2023.
- 2) *United States v. Taylor*, ACM 40371 – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel has reviewed approximately two-thirds of the record.

Through no fault of Appellant, undersigned counsel has been unable to complete his 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. Appellant was

informed of his right to timely appeal, was consulted with regard to requests for enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested sixth enlargement of time for good cause shown.

Respectfully submitted,

[Redacted signature block]

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[Redacted address block]

**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 23 August 2023.

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

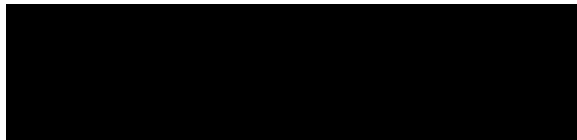
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32745
JACOB A. OLLISON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

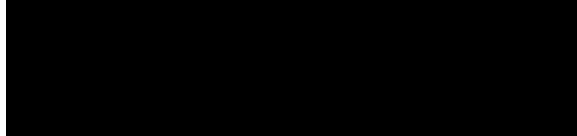


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 25 August 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**

<b>UNITED STATES,</b>	)	<b>MOTION FOR WITHDRAWAL OF</b>
<i>Appellee,</i>	)	<b>APPELLATE DEFENSE COUNSEL</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4),	)	No. ACM S32745
<b>JACOB A. OLLISON,</b>	)	
United States Air Force,	)	22 August 2023
<i>Appellant.</i>	)	

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. Major Eric Johnson has been detailed substitute counsel in undersigned counsel’s stead; he will make his notice of appearance within ten days. A thorough turnover of the record between counsel has been completed. The undersigned counsel will be departing from the Air Force Appellate Defense Division and beginning a new assignment on 5 September 2023.

Appellant has been advised of this motion to withdraw as counsel and consents to undersigned counsel’s withdrawal. A copy of this motion will be delivered to Appellant following its filing.

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

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 22 August 2023.

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee</i>	)	<b>ENLARGEMENT OF TIME (SEVENTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32745
<b>JACOB A. OLLISON,</b>	)	
United States Air Force	)	22 September 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 a seventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 October 2023**. The record of trial was docketed with this Court on 3 January 2023. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed.

On 25 October 2022, Appellant was tried by a special court-martial composed of a military judge alone at Altus Air Force Base, Oklahoma. Consistent with his pleas, Appellant was convicted of one charge and one specification of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 921. Record (R.) at 12, 40; Record of Trial (ROT) Vol. 1, Entry of Judgment dated 30 November 2022 (EOJ). The military judge sentenced Appellant to reduction to E-1, confinement for one month, and a bad conduct discharge. R. at 142; EOJ. The convening authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SrA Jacob Ollison*, undated.

The record of trial is two volumes consisting of three prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 142 pages. Appellant is not currently



confined. Undersigned counsel has completed his review of the record of trial in this case and is drafting the AOE.

Counsel is currently representing 24 clients; 13 clients are pending initial AOE's before this Court.<sup>1</sup> Two cases have priority over this case:

- 1) *United States v. Driskill*, ACM 39889 (f rev), USCA No. 23-0066/AF – The record of trial is 14 volumes consisting of 17 prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2062 pages. Undersigned counsel is preparing to present oral argument in this case to the U.S. Court of Appeals for the Armed Forces on 25 October 2023.
- 2) *United States v. Taylor*, ACM 40371 – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel has reviewed approximately two-thirds of the record and recently filed a motion to compel production of post-trial discovery.

Through no fault of Appellant, undersigned counsel has been unable to complete a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully advise Appellant regarding potential errors and complete an AOE. Appellant was informed of his right to timely appeal, was consulted with regard to requests for enlargements of time, and concurs with necessary requests for enlargements of time, including this request.

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<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel filed a motion to compel production of post-trial discovery in *U.S. v. Taylor*, ACM 40371, completed his review of the two-volume record and began drafting the AOE in this case, and filed a motion for reconsideration in *U.S. v. Gonzalez Hernandez*, ACM S32732. Additionally, counsel attended the Joint Appellate Advocacy Training on 24-25 August 2023, was off for the Labor Day holiday, and was on leave on 5 September 2023 and 18-22 September 2023.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the requested seventh enlargement of time for good cause shown.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

A black rectangular redaction box covering contact information, including a phone number and an email address.

**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 22 September 2023.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

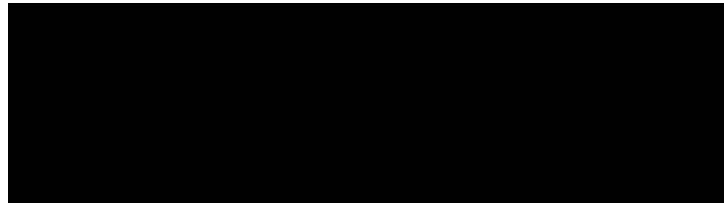
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32745
JACOB A. OLLISON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

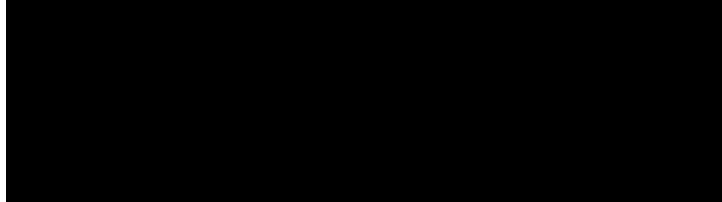


PETE FERRELL, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 26 September 2023.



PETE FERRELL, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

*Appellee,*

v.

Senior Airman (E-4)  
**JACOB A. OLLISON,**  
United States Air Force,

*Appellant.*

**BRIEF ON BEHALF OF  
APPELLANT**

Before Panel No. 1

No. ACM S32745

5 October 2023

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

**Assignment of Error**

**WHETHER A BAD CONDUCT DISCHARGE FOR ONE SPECIFICATION OF LARCENY IS INAPPROPRIATELY SEVERE CONSIDERING SRA OLLISON'S RECORD OF SERVICE, THE NATURE AND SERIOUSNESS OF THE OFFENSE, AND EXTENUATING CIRCUMSTANCES.<sup>1</sup>**

**Statement of the Case**

On 25 October 2022 at Altus Air Force Base, Oklahoma, a military judge sitting as a special court-martial convicted Senior Airman (SrA) Jacob A. Ollison, consistent with his pleas but without a plea agreement, of one specification of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ),<sup>2</sup> 10 U.S.C. § 921. Record (R.) at 35–36, 39–40. The military judge sentenced SrA Ollison to reduction to the grade of E-1, confinement for one month, and a bad conduct discharge. R. at 142. The convening authority took no action on the findings or sentence and denied SrA Ollison's request to defer the reduction in grade until the entry of

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<sup>1</sup> Additionally, Appellant personally raises one issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). See Appendix.

<sup>2</sup> Unless otherwise noted, all references to the Uniform Code of Military Justice (UCMJ), the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 MCM).

judgment. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SrA Jacob Ollison*, undated.

### **Statement of Facts**

*1. SrA Ollison initially performed admirably in his military career.*

SrA Ollison joined the Air Force in 2015, reporting to Malmstrom Air Force Base, Montana, for his first assignment. R. at 124. He excelled as a member of Security Forces, and his leadership quickly selected him to become a flight trainer on the Mk-19 weapon system. *Id.* His enlisted performance reports (EPRs) from this period reflect exceptional performance, consistently showing that he exceeded expectations. Pros. Ex. 2. As a result, he earned a promotion to Senior Airman below-the-zone. R. at 124–25. After he garnered a “must promote” recommendation on his first promotion-eligible EPR, the Air Force promoted him to Staff Sergeant. Pros. Ex. 2.

*2. SrA Ollison faced a series of personal and professional challenges after moving to a new base.*

After transferring to Altus Air Force Base, Oklahoma, in October 2020, life became more difficult for SrA Ollison. R. at 125. Shortly after his move, he found out his girlfriend was pregnant, and she gave birth in August 2021. *Id.* SrA Ollison was thrilled to have a son. *Id.* However, his girlfriend suffered from postpartum depression, and he struggled to know how to help her. *Id.* A paternity test then indicated that SrA Ollison was not the father of his girlfriend’s baby. *Id.* This revelation devastated SrA Ollison, creating a deep sense of loss. *Id.*

Amidst his personal struggles, SrA Ollison also felt he was having trouble fitting in at his new unit. *Id.* His scheduled deployment was canceled as a result of the difficulties in his personal life. *Id.* He also struggled to learn his new squadron’s mission, which was different from the previous work at which he excelled. *Id.* SrA Ollison’s personal and professional difficulties led

to a series of administrative actions,<sup>3</sup> culminating in an administrative demotion after his leadership learned about off-duty incidents of theft and speeding. Pros. Ex. 3. Ultimately, SrA Ollison received nonjudicial punishment for unprofessional behavior towards a colleague. *Id.*

3. *SrA Ollison undertook an ill-advised effort to be helpful to his unit.*

Recognizing the situation his missteps and struggles had created, SrA Ollison was looking for a new way to be helpful to his unit. R. at 23. The squadron had an all-terrain vehicle (ATV) which was broken and unusable, but SrA Ollison believed he could fix it. R. at 23, 31, 68. Having already rented a trailer for another purpose, he decided to take the ATV to his house and work on it, despite not having permission to do so. R. at 23–24. Once the ATV was at his house, he diagnosed its mechanical problems and ordered parts to repair it. R. at 23. Most of the parts arrived within a week, and SrA Ollison made his intended repairs. *Id.* Unfortunately, one of the parts was backordered, causing him to wait to complete all the repairs and return the ATV to the unit. *Id.* While waiting, there was one night that he thought he could keep the ATV, and he removed the registration plate and identifying decals from the ATV that night. *Id.* However, he realized the next morning that he should not keep it and began to search for replacement decals. *Id.*

Almost a month after SrA Ollison initially took the ATV to his house, a unit supply technician noticed it was missing and indicated he was going to search for it. R. at 24. SrA Ollison

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<sup>3</sup> One admitted administrative action, a letter of counseling (LOC) dated 22 June 2021, appears to be incomplete because it is missing the issuer’s final disposition decision and SrA Ollison’s acknowledgement thereof. Pros. Ex. 3 at 5. Despite these omissions, there is “some evidence” he received a copy of this LOC and had a chance to respond. *United States v. Shears*, No. ACM S32577, 2020 CCA LEXIS 304, at \*8-9 (A.F. Ct. Crim. App. Sep. 3, 2020). *See also* Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, dated 14 April 2022, at para. 19.15.1.2. Any objection to the admission of this LOC was also likely waived when trial defense counsel did not object to it while objecting to other portions of Prosecution Exhibit 3. R. at 44–51.



did not initially tell the supply technician he had the ATV because he was still waiting on the last part. *Id.* After thinking about it overnight, he returned to work the next day and told the supply technician the ATV was at his house. *Id.* Security Forces investigators found the ATV at his property and returned it to the base with the repairs SrA Ollison made previously. R. at 85, 106–07. When questioned, SrA Ollison voluntarily made a statement describing why he took the ATV. R. at 118.

### **Argument**

**A BAD CONDUCT DISCHARGE FOR ONE SPECIFICATION OF LARCENY IS INAPPROPRIATELY SEVERE IN LIGHT OF SRA OLLISON’S PREVIOUSLY GOOD RECORD OF SERVICE, THE LESS-SERIOUS NATURE OF THE OFFENSE, AND SEVERAL EXTENUATING CIRCUMSTANCES.**

#### *Standard of Review*

This Court reviews sentence appropriateness *de novo*. See *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

#### *Law and Analysis*

This Court may only approve “the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). “It follows that a sentence should be approved only to the extent it is found appropriate based on a CCA’s review of the entire record.” *United States v. Varone*, No. ACM S32685, 2022 CCA LEXIS 426, at \*7 (A.F. Ct. Crim. App. 21 Jul. 2022) (unpub. op). This Court’s broad power to ensure a just sentence is distinct from the convening authority’s clemency power to grant mercy. *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted).

In assessing sentence appropriateness, this Court considers “the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all matters contained in the record of trial.” *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009). Here, SrA Ollison served in exemplary fashion before encountering a series of personal and professional difficulties. *See* R. at 124–25; Pros Ex. 2. He quickly became a leader among his peers, using his skills to train others on a specialized weapon system. R. at 124. His record of service reflects many hallmarks of an accomplished young Airman: promotion to Senior Airman below-the-zone, persistent top ratings on his EPRs, and a “must promote” recommendation on his first promotion-eligible EPR, which led to his promotion to Staff Sergeant. R. at 124–25; Pros Ex. 2. All these accomplishments show that SrA Ollison performed at a high level and provided commendable service to the Air Force. His later missteps and struggles do not negate the positive aspects of his service, which should be accounted for when considering an appropriate sentence.

Consistent with his past commendable performance, SrA Ollison repeatedly took responsibility for his misconduct. He came forward to tell the unit supply technician he had the ATV in question, and when later questioned by security forces, he voluntarily made a statement that forthrightly described his actions. R. at 24, 118. He ultimately pled guilty without a plea agreement, accepting responsibility without a guarantee of any benefits or protections. R. at 35–36, 39–40. His consistent acceptance of responsibility shows that he appreciated the wrongfulness of his actions before the imposition of punishment. Thus, a severe sentence is not necessary to convey this point to him. SrA Ollison’s previously strong performance record and his consistent accountability show he is an Airman who neither warrants nor deserves a bad conduct discharge for the offense in this case.

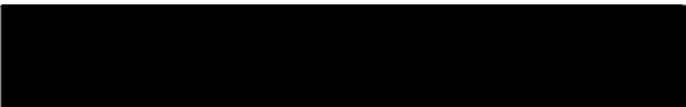
Likewise, the nature and seriousness of this offense also fall short of warranting a bad conduct discharge. SrA Ollison pled guilty to a single specification of larceny. R. at 39–40. The record of trial includes only speculation as to the value of the ATV, which is the only property at issue, and the specification states only that it was “of some value.” See R. at 118; ROT Vol. 1, DD Form 458, *Charge Sheet*, dated 6 June 2022. However, it is clear that at the time SrA Ollison took this ATV, it was broken and unusable. R. at 23, 31, 68. SrA Ollison intended to repair and return it, and his actions only meet the elements of larceny because he later developed the intent, which lasted only one night, to keep it. R. at 23. This ATV was later returned to the Air Force with the repairs SrA Ollison made, including parts he acquired at his own expense. R. at 23, 30, 85, 106–07. This larceny is not a particularly serious offense because SrA Ollison originally intended to repair and return the broken ATV, the intent to permanently deprive the rightful owner lasted for a single night, and the ATV was ultimately returned in arguably better condition than it was taken. Further, it took the unit about a month to even notice the ATV was gone, indicating that the deprivation of this ATV, while it lasted, did not have a significant impact on the unit or its mission. See R. at 24. This is not to say that SrA Ollison should face no consequences; he served the adjudged one month of confinement as well as reduction to the lowest enlisted grade. See R. at 142. However, a bad conduct discharge, on top of the rest of the sentence, is too severe when considering the nature of this offense.

Finally, there are a number of extenuating circumstances reflected in the record of trial. “Matter in extenuation of an offense serves to explain the circumstances surrounding the commission of an offense, including those reasons for committing the offense, which do not constitute a legal justification or excuse.” R.C.M. 1001(d)(1)(A). When he took the ATV, SrA Ollison had gone through several months of personal and professional challenges. After


struggling to support his girlfriend through postpartum depression, he experienced a devastating loss when he learned the child whom he loved was not his son. R. at 125. His personal difficulties also affected him professionally by causing his unit to cancel his scheduled deployment and contributing to administrative actions. *Id.*; Pros. Ex. 3 at 6, 28–29. At the same time, he struggled to adjust to the mission of his new unit, which was very different from the one in which he previously excelled. R. at 125. These circumstances help to explain why SrA Ollison felt the need to show his unit he could be helpful. *Id.* He decided to take the ATV to repair it without permission under the stress of this series of adversities. This was clearly not a good decision, as SrA Ollison acknowledged with his guilty plea, but it came about as a result of the trying circumstances he had recently been through. Although they do not constitute a legal justification, these extenuating circumstances should be reflected in the sentence because they help to show why SrA Ollison made the mistakes he did. Considering all these factors together, the record shows SrA Ollison is a previously strong performer who experienced some adversities which ultimately led to the charged larceny, an offense that was not of a particularly serious nature. A bad conduct discharge is inappropriately severe under the totality of these circumstances.

**WHEREFORE**, SrA Ollison respectfully requests that this Honorable Court not approve the bad conduct discharge.

Respectfully submitted,



FREDERICK J. JOHNSON, 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 Government Trial and Appellate Operations Division on 5 October 2023.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

## APPENDIX

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

**WHETHER TRIAL DEFENSE COUNSEL WERE INEFFECTIVE WHEN THEY FAILED TO PRESENT ANY EVIDENCE, BESIDES APPELLANT’S UNSWORN STATEMENT, DURING PRE-SENTENCING PROCEEDINGS.**

### *Additional Facts*

In preparation for the pre-sentencing phase of his court-martial, SrA Ollison obtained five draft character letters. Declaration of 4 October 2023. These letters described how he often selflessly helped others, especially by repairing vehicles. *Id.* Despite having these letters available, his trial defense counsel did not present them or any other evidence, except his unsworn statement. R. at 122. SrA Ollison does not recall discussing the decision to not present this evidence with his trial defense counsel. Declaration of 4 October 2023.

## ARGUMENT

**TRIAL DEFENSE COUNSEL WERE INEFFECTIVE BECAUSE THEY FAILED TO PRESENT AVAILABLE EVIDENCE DURING PRE-SENTENCING PROCEEDINGS AFTER SRA OLLISON PLED GUILTY WITHOUT A PLEA AGREEMENT.**

### *Standard of Review*

This Court reviews claims of ineffective assistance of counsel *de novo*. *United States v. Akbar*, 74 M.J. 364, 379 (C.A.A.F. 2015).

### *Law and Analysis*

To establish ineffective assistance, an appellant must show “that the performance of defense counsel was deficient” and “that the appellant was prejudiced by the error.” *United States*

*v. Scott*, 81 M.J. 79, 84 (C.A.A.F. 2021). This test comes from the seminal case *Strickland v. Washington*, which also notes an appellant must overcome “a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” 466 U.S. 668, 689 (1984). An appellant “must show specific defects in counsel’s performance that were unreasonable under prevailing professional norms.” *Scott*, 81 M.J. at 84 (internal quotation marks omitted) (quoting *United States v. Mazza*, 67 M.J. 470, 475 (C.A.A.F. 2009)).

Ineffective assistance at the pre-sentencing phase of a court-martial “may occur if trial defense counsel either ‘fails to investigate adequately the possibility of evidence that would be of value to the accused in presenting a case in extenuation and mitigation or, having discovered such evidence, neglects to introduce that evidence before the court-martial.’” *Id.* (quoting *United States v. Boone*, 49 M.J. 187, 196 (C.A.A.F. 1998)). For instance, the court in *Scott* found the trial defense counsel’s performance deficient after they called three witnesses and the accused made an unsworn statement during pre-sentencing. *Id.* at 85. The counsel failed to introduce any documentary evidence concerning the accused’s career or contact five other potential witnesses whose names they received from the accused. *Id.* at 83–84. The court reasoned that these failures stemmed from a lack of appreciation for the risk of a dismissal and, consequently, held that the trial defense counsel’s performance was deficient. *Id.* at 85–86.

Here, trial defense counsel did not present any documents, witness testimony, or other evidence, other than SrA Ollison’s unsworn statement. R. at 122. This is less than the deficient performance in *Scott*, where the counsel at least called three witnesses. 81 M.J. at 85. Moreover, the counsel here had more evidence available than in *Scott*, where counsel received only the names of five other potential witnesses. *Id.* at 83–84. SrA Ollison provided his counsel with five draft character letters which they did not introduce. Declaration of 4 October 2023. Failing to introduce

any evidence when these letters were available is a defect in performance. This defect is further aggravated by the fact that SrA Ollison pled guilty without a plea agreement because, without any agreed upon sentencing limitations, it was particularly important to present a strong sentencing case. R. at 35–36, 39–40.

This Court also considers whether counsel had tactical reasons for their choices and will not second guess the tactical decisions of trial defense counsel. *Scott*, 81 M.J. at 86 (finding no tactical reason for trial defense counsel’s decision). However, the tactical decision needs to be reasonable. *Id.* (citing *United States v. Powell*, 40 M.J. 1, 10 (C.M.A. 1994)). The record of trial reflects no reasonable basis for a tactical decision to present no sentencing evidence, and SrA Ollison does not recall discussing this decision with his trial defense counsel. Declaration of 4 October 2023.

The second prong of the *Strickland* test for ineffective assistance is whether the Appellant was prejudiced by the error. *Scott*, 81 M.J. at 84. To establish prejudice at the pre-sentencing stage, an appellant must show “a reasonable probability that, but for counsel's [deficient performance] the result of the proceeding would have been different.” *Id.* (alteration in original) (quoting *Strickland*, 466 U.S. at 694). Even if counsel presented some evidence, prejudice may occur “if ‘there is a reasonable probability that there would have been a different result if all available mitigating evidence had been exploited by the defense.’” *Id.* at 84–85 (quoting *Akbar*, 74 M.J. at 438). In *Scott*, the court held there was no prejudice because the military judge knew much of what the additional witnesses would have testified from other sources, and the aggravating aspects of the offense left no reasonable probability that additional mitigating evidence would have changed the result. *Id.* at 86–87.



In contrast here, the military judge did not have any other source to learn the mitigating evidence contained in the draft character statements. Several of these statements describe SrA Ollison's penchant for helping others by repairing their vehicles and his considerable skill at doing so. Declaration of 4 October 2023. SrA Ollison explained that he originally took the ATV to repair it and be helpful to his unit, but his unsworn statement only vaguely alluded to his experience working on vehicles. R. at 23, 123.

Had the court known about SrA Ollison's regular practice of helping others repair their vehicles, it would have shown that his initial reason for taking the ATV was genuine. The court would have seen that this is how SrA Ollison often uses his skills to help others, not just a convenient explanation for his actions. With the addition of this mitigating context, it is reasonably probable the result of the proceeding would have been different because it would have been clearer that SrA Ollison initially acted with a genuine intention to help his unit. Further, this different result could reasonably have included a sentence without the most severe punishment adjudged, the bad conduct discharge. R. at 142. Thus, SrA Ollison was prejudiced by the failure to present this evidence.

**WHEREFORE**, SrA Ollison personally and respectfully requests this Honorable Court set aside the sentence to a bad conduct discharge.

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

UNITED STATES,	)	
<i>Appellee,</i>	)	MOTION TO COMPEL AFFIDAVITS
	)	FOR INEFFECTIVE ASSISTANCE
	)	OF COUNSEL
v.	)	
	)	ACM S32745
Senior Airman (E-4)	)	
JACOB A. OLLISON, USAF	)	Panel No. 1
<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 Court’s Rules of Practice and Procedure, the United States hereby requests this Court order Appellant’s trial defense counsel, Maj KH and Capt TW, to provide an affidavit or declaration in response to Appellant’s alleged ineffective assistance of counsel claims.<sup>1</sup>

Maj KH and Capt TW represented Appellant at his trial. Appellant filed his Assignments of Error brief with this Court on 5 October 2023. The United States requested an affidavit from both Maj KH and Capt TW covering the alleged ineffective assistance of counsel claim. Both have responded via email and declined to provide an affidavit until ordered to do so by this Court.

The United States requires an affidavit from Maj KH and Capt TW to adequately respond to Appellant’s brief and to Appellant’s ineffective assistance of counsel claim. *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

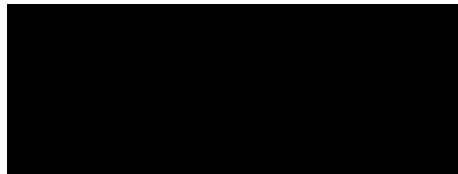
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<sup>1</sup> Filed in conjunction with this motion, the United States has also moved this Court for an enlargement of time in order to adequately respond to Appellant’s Assignment of Error in which he alleges ineffective assistance of counsel against his trial defense counsel. The United States seeks an enlargement of time following the submission of Maj KH’s and Capt TW’s affidavits in order to properly and completely respond to Appellant’s brief.

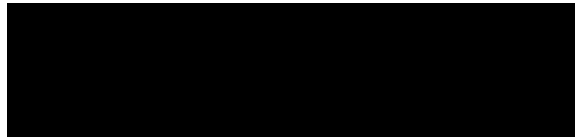
without first obtaining an affidavit from trial defense counsel. *See* Rose, 68 M.J. at 237; Melson, 66 M.J. at 347. Affidavits or declarations are necessary in this case because only trial defense counsel themselves can explain their decision not to present certain sentencing evidence at Appellant's court-martial.

Accordingly, the United States respectfully requests this Court order Maj KH and Capt TW to provide an affidavit with specific, factual responses to Appellant's claim of ineffective assistance of counsel within 30 days of the Court's order.

WHEREFORE, the United States requests this Court grant this Motion to Compel Affidavits.



G. MATT OSBORN, Lt Col, USAF  
Appellate Government Counsel  
Air Force Legal Operations Agency  
United States Air Force

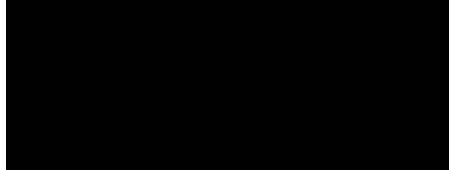


MARY ELLEN PAYNE  
Associate Chief, Government  
Trial and Appellate Counsel Division  
Air Force Legal Operations Agency  
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate defense counsel, and the Air Force Appellate Defense Division on 17 October 2023 via electronic filing.



G. MATT OSBORN, Lt Col, USAF  
Appellate Government Counsel  
Air Force Legal Operations Agency  
United States Air Force



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

UNITED STATES,	)	
<i>Appellee,</i>	)	MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	ACM S32745
Senior Airman (E-4)	)	
JACOB A. OLLISON, USAF	)	Panel No. 1
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m) of this Court’s Rules of Practice and Procedure, the United States hereby requests an enlargement of time in order to adequately respond to Appellant’s Assignment of Error in which he alleges ineffective assistance of counsel against his trial defense counsel. Filed in conjunction with this motion, the United States filed a Motion to Compel Affidavits and asked this Court to order Appellant’s trial defense counsel, Maj KH and Capt TW, to provide an affidavit or declaration in response to Appellant’s alleged ineffective assistance of counsel claims. The United States seeks a fourteen-day enlargement of time following the submission of Maj KH’s and Capt TW’s affidavits in order to properly and completely respond to Appellant’s brief.

Maj KH and Capt TW represented Appellant at his trial. Appellant filed his Assignments of Error brief with this Court on 5 October 2023. The United States requested an affidavit from both Maj KH and Capt TW covering the alleged ineffective assistance of counsel claim. Both have responded via email and declined to provide an affidavit until ordered to do so by this Court.

The United States requires an affidavit from Maj KH and Capt TW to adequately respond to Appellant’s brief and to Appellant’s ineffective assistance of counsel claim. *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 an affidavit from trial defense counsel. See Rose, 68 M.J. at 237; Melson, 66 M.J. at 347.

Accordingly, the United States, in a separate motion, has requested this Court order Maj KH and Capt TW to provide an affidavit with specific, factual responses to Appellant's claim of ineffective assistance of counsel within 30 days of the Court's order.

Additionally, the government's answer to Appellant's brief is currently due to the Court on 4 November 2023. Undersigned counsel will require a short amount of time after the submission of affidavits in order to properly address Appellant's ineffective assistance of counsel claim. Good cause exists to grant this request. Undersigned counsel needs this additional time in order to properly address Appellant's ineffective assistance of counsel claims, which cannot be analyzed until Maj KH's and Capt TW's affidavits are received. Barring unforeseen circumstances, the United States believes fourteen days is sufficient to prepare a proper responsive brief for this Honorable Court on this issue once the ordered affidavits are filed with the Court.

This case was docketed with the Court on 3 January 2023. Appellant filed his Assignments of Error brief with this Honorable Court on 5 October 2023, 275 days after docketing. This is the United States' first request for an enlargement of time. As of the date of this request, 287 days have elapsed since docketing.

WHEREFORE, the United States requests this Court grant this Motion for Enlargement of Time.



G. MATT OSBORN, Lt Col, USAF  
Appellate Government Counsel  
Air Force Legal Operations Agency  
United States Air Force

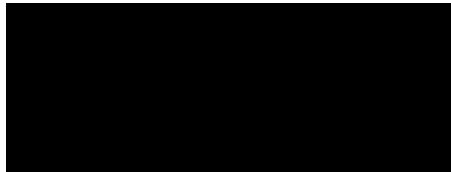


MARY ELLEN PAYNE  
Associate Chief, Government  
Trial and Appellate Counsel Division  
Air Force Legal Operations Agency  
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate defense counsel, and the Air Force Appellate Defense Division on 17 October 2023 via electronic filing.



G. MATT OSBORN, Lt Col, USAF  
Appellate Government Counsel  
Air Force Legal Operations Agency  
United States Air Force



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

UNITED STATES	)	No. ACM S32745
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Jacob A. OLLISON	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 5 October, Appellant, through counsel, submitted an assignments of error brief. In the brief, Appellant alleges, *inter alia*, that trial defense counsel were ineffective in that they did not present any evidence, including five draft character letters Appellant obtained, during pre-sentencing proceedings.\*

On 17 October, the Government filed a Motion to Compel Affidavits For Ineffective Assistance of Counsel and contemporaneously filed a Motion for Enlargement of Time. The Government requests this court compel Appellant's trial defense counsel, Major Kimberly Hopkin and Captain Tyler Washburn, to provide affidavits or declarations in response to the claimed ineffective assistance of counsel. According to the Government, Appellant's trial defense counsel indicated they would only provide an affidavit or declaration upon order by this court. In the motion for enlargement of time, the Government requests 14 days after the court's receipt of declarations or affidavits to submit its answer. Appellant did not file a response to the motions.

The court has examined the claimed deficiencies and finds good cause to compel a response. 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, it finds the Government's requested enlargement of time is appropriate.

Accordingly, after considering the Government's motions and the deficiencies alleged by Appellant, it is by the court on this 30th day of October, 2023,

**ORDERED:**

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\* Appellant personally raises this assignment of error pursuant to *U.S. v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).



The Government's Motion to Compel Declarations or Affidavits is **GRANTED**. Major Kimberly Hopkin and Captain Tyler Washburn are each ordered to provide an affidavit or declaration to the court that is a specific and factual response to Appellant's claims that they were ineffective in that they did not present any evidence, including the five draft character letters Appellant obtained, during pre-sentencing proceedings.

A responsive affidavit or declaration by each counsel will be provided to the court not later than **30 November 2023**. The Government shall 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 **14 December 2023**.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

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

**UNITED STATES,**

*Appellee,*

v.

Senior Airman (E-4)  
**JACOB A. OLLISON,**  
United States Air Force,

*Appellant.*

**MOTION TO ATTACH**

Before Panel No. 1

No. ACM S32745

5 October 2023

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

Pursuant to Rules 23 and 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves to attach the Appendix to this motion to Appellant’s Record of Trial. The Appendix may be attached consistent with *United States v. Jessie*, because its consideration is necessary to “resolv[e] issues raised by materials in the record.” 79 M.J. 437, 444 (C.A.A.F. 2020); *accord United States v. Willman*, 81 M.J. 355, 358 (C.A.A.F. 2021) (“In addition to permitting consideration of any materials contained in the ‘entire record,’ our precedents also authorize the CCAs to supplement the record to decide any issues that are raised, but not fully resolved, by evidence in the record.”). The Appendix totals seven (7) pages in length, including attachments, and consists of the following:

**Declaration of SrA Jacob A. Ollison.**: A Declaration made under penalty of perjury and signed by SrA Ollison. This declaration is relevant and necessary to resolving SrA Ollison’s assignment of error asserting his trial defense counsel were ineffective by not presenting any evidence, including the five draft character letters he obtained, during pre-sentencing proceedings.<sup>1</sup>

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<sup>1</sup> SrA Ollison personally raises this assignment of error pursuant to *U.S. v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

In deciding this issue, this Court must consider whether trial defense counsel’s performance was defective, whether there was a reasonable tactical reason to not present available evidence, and whether SrA Ollison was prejudiced by defective performance. *United States v. Scott*, 81 M.J. 79, 84–86 (C.A.A.F. 2021). To make these determinations, it is necessary to consider what evidence was available that trial defense counsel chose not to introduce. SrA Ollison’s declaration describes draft character letters he obtained and includes copies of them as attachments. *See* Appendix. Moreover, SrA Ollison asserts that he does not remember discussing a decision to not use these letters, or any other evidence besides his unsworn statement, in the pre-sentencing proceedings. *Id.* This affects the lack of a presented sentencing case, which is a matter contained in the record. *See* R. at 122.

**WHEREFORE**, Appellant respectfully requests this Honorable Court grant this motion to attach.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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

**Appendix**

1. Declaration of SrA Jacob A. Ollison., dated 4 October 2023, 7 pages.

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 5 October 2023.

Respectfully submitted,

[REDACTED]

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

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

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

UNITED STATES,	)	
<i>Appellee,</i>	)	MOTION TO COMPEL AFFIDAVITS
	)	FOR INEFFECTIVE ASSISTANCE
	)	OF COUNSEL
v.	)	
	)	ACM S32745
Senior Airman (E-4)	)	
JACOB A. OLLISON, USAF	)	Panel No. 1
<i>Appellant.</i>	)	

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

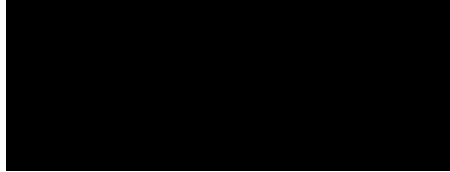
Pursuant to Rule 23.3(b) of this Court’s Rules of Practice and Procedure, the United States submits the following documents previously ordered by this Honorable Court on 30 October 2023:

- Declaration of Maj KH, dated 27 November 2023, 2 page(s); and
- Declaration of Capt TW, dated 27 November 2023, 4 page(s).

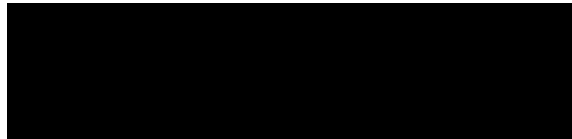
On 17 October 2023, the United States requested this Honorable Court compel Maj KH and Capt TW to provide affidavits or declarations regarding Appellant’s claim of ineffective assistance of counsel against them. On 30 October 2023, this Honorable Court granted that motion and ordered Maj KH and Capt TW to “provide an affidavit or declaration to the court that is a specific and factual response to Appellant’s claims that they were ineffective in that they did not present any evidence, including the five draft character letters Appellant obtained, during pre-sentencing proceedings.” The Order stated that the affidavits or declarations “will be provided to the court not later than 30 November 2023” and that the United States’ “answer to Appellant’s assignments of error brief will be filed not later than 14 December 2023.”

Maj KH provided her declaration to undersigned counsel on 27 November 2023. Capt TW provided his declaration to undersigned counsel on 27 November 2023.

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



G. MATT OSBORN, Lt Col, USAF  
Appellate Government Counsel  
Air Force Legal Operations Agency  
United States Air Force

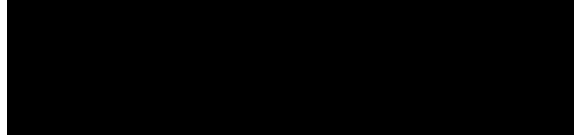


MARY ELLEN PAYNE  
Associate Chief, Government  
Trial and Appellate Counsel Division  
Air Force Legal Operations Agency  
United States Air Force



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate defense counsel, and the Air Force Appellate Defense Division on 29 November 2023 via electronic filing.



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



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

UNITED STATES	)	No. ACM S32745
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Jacob A. OLLISON	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 30 October 2023, the court ordered affidavits or declarations from Appellant’s trial defense counsel regarding Appellant’s claim that they were ineffective. On 29 November 2023, the Government submitted a motion to attach the following documents to the record;

Declaration of Maj KH, dated 27 November 2023; and

Declaration of Capt TW, dated 27 November 2023.

The Appellant did not oppose the motion.

The court notes that the title of the Government’s motion is “Motion to Compel Affidavits for Ineffective Assistance of Counsel,” however in the document, the Government asked the court to grant “this Motion to Attach Documents.” Given the context of the Government’s 29 November 2023 motion, this court will accept the Government’s motion as a motion to attach but reminds counsel to be attentive with the preparation of their filings in the future.

The court has considered the Government’s motion, the applicable law, and the court’s Rules of Practice and Procedure, and grants the motion.

Accordingly, it is by the court on this 8th day of December, 2023,

**ORDERED:**

Appellant’s motion to attach the above-referenced affidavits is **GRANTED**.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court



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

<b>UNITED STATES,</b>	)	ANSWER TO ASSIGNMENTS OF
<i>Appellee,</i>	)	ERROR
	)	
v.	)	Before Panel No. 1
	)	
Senior Airman (E-4)	)	No. ACM S32745
<b>JACOB A. OLLISON</b>	)	
United States Air Force	)	14 December 2023
<i>Appellant.</i>	)	

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

**ISSUES PRESENTED**

**I.**

**WHETHER APPELLANT’S SENTENCE WAS INAPPROPRIATELY SEVERE FOR A LARCENY CONVICTION CONSIDERING HIS HISTORY OF MISCONDUCTS AS AN AIRMAN, THE SERIOUSNESS OF THE OFFENSE, AND HIS LACK OF REHABILITATION POTENTIAL.**

**II.**

**WHETHER APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL DEFENSE COUNSEL STRATEGICALLY DECIDED NOT TO PRESENT APPELLANT’S CHARACTER LETTERS.**

**STATEMENT OF CASE**

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

## STATEMENT OF FACTS

In October 2020 Appellant was transferred to Altus Air Force Base, Oklahoma, where he transitioned to a law enforcement position with the 97th Security Forces Squadron. (R. at 20,125.) Appellant's unit possessed a damaged all-terrain vehicle (ATV) which Appellant believed would be repaired by the squadron and returned for use in furtherance of the mission. (R. at 34.) Appellant was familiar with mechanics and believed he held the capabilities necessary to repair the ATV. (R. at 23.) He sought permission to take the vehicle to his personal residence for repairs, but his request was denied by the individual responsible for the supply building. (R. at 106.) Despite the explicit direction that Appellant could not remove the ATV and transport it to his residence, Appellant loaded it onto his trailer and drove the ATV to his home. (R. at 23.) Although Appellant initially planned to repair the ATV and return it to the base, he soon began contemplating the vast number of ways the ATV could be of personal use to him. (R. at 23, 30.) With knowledge the ATV was military property, Appellant created an intent to retain the vehicle for use on his farm and deprive the government of any further benefits of the ATV. (R. at 24, 30.) Upon making this decision, Appellant removed the identifying decals and registration plate from the ATV. (R. at 23.)

When the unit supply technician noticed the ATV was missing and shared his plans to search for the vehicle with Appellant and members of his unit, Appellant did not admit to taking the ATV. (R. at 24.) It was not until the following day that Appellant decided he would admit to wrongfully taking the ATV off base and to his own home for his own personal use. (Id.)

## ARGUMENT

### I.

#### **APPELLANT’S HISTORY OF ADMINISTRATIVE ACTIONS, PRIOR PUNISHMENTS, AND LOW REHABILITATIVE POTENTIAL DEMONSTRATE THE APPROPRIATENESS OF HIS BAD CONDUCT DISCHARGE.**

##### *Additional Facts*

Appellant repeatedly engaged in questionable conduct throughout his time in the Air Force, specifically since transferring to Altus Air Force Base in October 2020.

On 15 February 2021, Appellant was issued a Letter of Counseling (LOC) for his decision to “release pertinent information regarding an active APD response to a non-base affiliated individual” and for exhibiting behavior which “lack[ed] the core competencies as a law enforcement and security professional.” (Pros. Ex. 3 at 1.) His behavior was described as “unacceptable” and “[would] not be tolerated by ... any commissioned officer in the United States Air Force.” (Id.) Appellant was also reprimanded on 2 June 2021 when he received a LOC for engaging in horseplay with his airman who was armed with duty weapons and performing their sentry duty. (Pros. Ex. 3 at 7.) On 22 June 2021, Appellant received<sup>1</sup> a LOC for his failure “to be present for duty during [his] designated work time.” (Pros. Ex. 3 at 4.) The master sergeant who certified the letter described Appellant’s actions as showing “a lack of judgement and maturity.” (Id.)

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<sup>1</sup> Although this LOC appears to lack elements of completeness, “some evidence” exists demonstrating Appellant received and was provided the opportunity to respond to the LOC. (App. Br. at 3.) As Appellant explained, it is likely any objection to this evidence was waived. (Id.)

Appellant then received an Administrative Demotion in April 2022 after stealing \$300 from a Walmart cash register – his part time employer whom he failed to obtain proper Air Force permission to work for. (Pros. Ex. 3 at 13.) The demotion was also in response to his reckless driving in Texas, when he passed vehicles in a no passing, 55 miles per hour zone while traveling 113 miles per hour. (Id.) In his memorandum response to the administrative demotion action, dated 25 April 2022, he stated “Please consider letting me keep my rank of Staff Sergeant and have a final chance to prove that I can lead here at Altus as I did at Malmstrom.” (Pros. Ex. 3 at 29.) On 18 May 2022 nonjudicial punishment proceedings, pursuant to Article 15 UCMJ were brought against Appellant for “making inappropriate sexual comments” towards his subordinate on multiple different occasions. (Pros. Ex. 3 at 33.)

### *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*

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). 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). 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 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, No. 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)). According to R.C.M. 1001(b)(4), trial counsel may “present evidence as to any aggravating circumstances directly relating to or resulting from the offenses of which the accused has been found guilty.” Under R.C.M. 1001 (b)(5), evidence of rehabilitation potential, “the accused’s potential to be restored,” may also be presented.

Additionally, this Court has acknowledged the relevance of prior misconduct in determinations on rehabilitation potential, stating when “there exists [] in the record abundant evidence of the appellant’s reoccurring misconduct and disregard for military standards...a bad conduct discharge [is] wholly appropriate.” United States v. Filyaw, No. ACM S32062, 2013 CCA LEXIS 845, at \*6 (A.F. Ct. Crim. App. 2 Oct. 2013) (unpub. op.).

### *Analysis*

Appellant’s sentence is not inappropriately severe. His sentence reflects his prior misconducts and lack of rehabilitation potential, fits his crime, and considers the extenuating circumstances he encountered during the relevant time. Thus, this Court should uphold Appellant’s sentence and find it was a reasonable consequence of stealing government property for his own personal use.

Appellant attempts to minimize his past misconducts by highlighting previous successes and personal circumstances surrounding his larceny conviction. But the appropriateness of his

sentence must not be limited to only these factors, and should include “[consideration of] 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.” Bare, 63 M.J. at 714. Considering these factors, Appellant’s sentence was appropriate.

Particularly relevant to this analysis are the repeated misconducts for which Appellant was reprimanded for by the Air Force. Despite Appellant’s positive contributions to the Air Force from 2015 to 2020, his behavior since transferring bases in October 2020 has been described as “unacceptable,” intolerable, and lacking “judgement and maturity.” (Pros. Ex. 3 at 1,4.) Between February 2021 and May 2022, a fifteen-month time frame, Appellant received three Letters of Counseling, an administrative demotion, and an Article 15. (Pros. Ex. 3.) The conduct warranting such measures included inappropriately releasing pertinent base information, horseplay with an armed airman, failing to arrive for duty, stealing from Walmart, driving recklessly, and making “inappropriate sexual comments” to a subordinate. (Pros Ex. 3.) Unlike Appellant attempts to illustrate, his admirable career was strictly limited to his first station and his past three years of service have not only been unadmirable, they have been punishable. Thus, the particular Appellant, his record of service, and the record of trial support holding Appellant accountable through a bad conduct discharge, reduction of grade to E-1, and confinement for one month.

Similarly, this Court may consider an Appellant’s ability to be restored and has held a bad conduct discharge “wholly appropriate” when the record demonstrated “reoccurring misconduct and disregard for military standards.” Filyaw, unpub. op. at 6; R.C.M. 1001 (b)(5). Appellant’s lack of rehabilitation is demonstrated through his reoccurring misconducts and bolstered by his first sergeant who stated “Airman Ollison has low rehabilitative potential.” (R.

at 83.) Appellant's history of misconduct establishes his lack of rehabilitation potential, which this Court has recognized to be appropriate evidence in upholding a bad conduct discharge.

The nature and seriousness of the offense should also be considered when sentence appropriateness is assessed. Bare, 63 M.J. at 714. Appellant claims a bad conduct discharge is inappropriately severe for one specification of larceny. (App. Br. at 4.) He states the theft was an "ill-advised effort to be helpful to his unit." (App. Br. at 3.) But Appellant knew the ATV was military property, and he even believed it would eventually be repaired by the 97th Security Forces Squadron and used in furtherance of the squadron's goals. (R. at 32-34.) Appellant was told not to remove the ATV but proceeded to take the ATV off base and to his personal residence where he decided it would be useful on his farm. (R. at 23, 24, 30.) He then removed the identifying stickers and registration plate from the ATV, further demonstrating he had no intent to "be helpful to his unit," and instead intended to deprive them of a tool he believed would eventually be employed to support unit goals. (Id.) Appellant admitted to the following: he wrongfully took the ATV, he intended to permanently deprive the government of the vehicle, and he made conscious efforts to prepare the ATV for his own personal use. (R. at 23, 24.) These facts do not reflect an ill-advised attempt to assist his unit: they demonstrate why the nature and seriousness of his offense would lead the military judge to sentence him to a bad conduct discharge.

Appellant also attempts to justify his wrongdoings by noting his personal struggles, stating these were extenuating circumstances which demonstrate why he engaged in wrongful and illegal acts. (App. Br. at 2.) In his brief, Appellant recognized that extenuating circumstances do not constitute a legal justification for his offense, yet he dedicated an entire section of his facts and a page of his analysis attempting to explain how his larceny conviction

was “a result of the trying circumstances he had recently been through.” (App. Br. at 2, 7.) Personal adversity cannot be an excuse to steal military property, and larceny is not a result of personal adversity.

Appellant is challenging the appropriateness of a bad conduct discharge he received for larceny. Still, Appellant was sentenced to far less punishment than the maximum available, demonstrating that the military judge considered extenuating factors. The maximum punishment authorized for Appellant was a bad conduct discharge, confinement for one year, hard labor without confinement for up to three months, two-thirds forfeiture of pay for one year, and reduction to E-1. (R. at 35.) The Government sought a bad conduct discharge, confinement for two months, reduction of grade to E-1, and forfeiture of two-third pays for two months. (Id.) Appellant was sentenced to confinement for one month, reduction to E-1, and a bad conduct discharge. (*Entry of Judgement*, dated 30 November 2022, ROT, Volume 1.) The military judge sentenced Appellant to confinement for only half of what the Government recommended and did not sentence him to forfeiture of pay.

As an Airman, Appellant engaged in repeated misconducts, was provided extensive warnings prior to the bad conduct discharge, and he had ample chances to take responsibility for his behavior by altering his actions. But, Appellant’s behavior has progressively worsened which likely led the military judge to adjudge a bad conduct discharge. In considering confinement time, the military judge likely considered Appellant’s personal adversities and sentenced him to minimal confinement, one month rather than two years, to reflect such extenuating circumstances. Thus, the military did consider Appellant’s extenuating circumstances and sentenced him accordingly.



The particular Appellant, his record of service, the record of trial, nature and seriousness of the crime, rehabilitation potential, and extenuating circumstance were all considered by the military judge and lead him to appropriately adjudge a bad conduct discharge, reduction of grade, and a month in confinement – a sentence which “fit[s] the offender” and his convictions. Mack, 9 M.J. at 317. For these reasons, this Court should affirm Appellant’s sentence because it is not inappropriately severe.

## II.

### **APPELLANT’S TRIAL DEFENSE COUNSEL WAS NOT INEFFECTIVE.**

#### *Additional Facts*

Prior to the convening of Appellant’s court-martial, Appellant trial defense counsel Capt TW engaged in explanatory plea negotiations with the government. (Capt Tyler Washburn Affidavit, dated 27 November 23.) However, before an agreement was solidified, the government interviewed a prior girlfriend of Appellant who made allegations of domestic abuse, violence, and destruction of property. (Id.) She also claimed another former girlfriend was domestically abused by Appellant. (Id.) In light of this information, the government refused to enter into any plea agreement without the inclusion of a bad-conduct discharge. (Id.) After discussion with Appellant, Capt TW strategically decided to enter a naked guilty plea to demonstrate Appellant’s acceptance of responsibility and to increase Appellant’s chances of avoiding a bad conduct discharge. (Id.) The government’s additional allegations of domestic violence, destruction of property, unlawful video recording, and other potential crimes altered trial defense counsel’s planned course of action for Appellant’s defense. (Id.)

Appellant provided Capt TW and Maj KH, Appellant trial defense counsel, with four signed character letters and a fifth which was not signed and therefore was not admissible during

the sentencing phase. (Id.) These letters raised several concerning comments which included references made to domestic violence and statements which could potentially lead to new allegations or unfavorable results for Appellant – like putting his current job in jeopardy or opening the door to further criticism by the government. (Id.) Additionally, several of the authors had known Appellant for a limited time and therefore lacked a strong foundation for speaking on Appellant’s character. (Id.) Despite these issues, Capt TW and Maj KH printed the letters and prepared them for sentencing. (Id.) After discussing their concerns relating to the questionable benefit the character letters would provide, trial defense counsel and Appellant agreed that whether to use the character letters would be a game-time decision. (Id.)

During sentencing, Capt TW and Maj KH were able to keep evidence off the record pertaining to Appellant’s history of domestic violence because the memorandum for record in Appellant’s Personnel Information File detailing suspicions of domestic violence was not maintained in conformity with proper service regulations. (Id.) Capt TW and Maj KH anticipated the government would attempt to introduce this evidence again and recognized that if they relaxed the rules of evidence for their sentencing case in an effort to introduce character letters and a photography array, there would be a much stronger argument for admitting the memorandum of record containing the domestic violence allegations. (Id.) Capt TW and Maj KH weighted the costs and benefits of introducing the character letters, discussed the issue with Appellant, and made an “informed strategic decision” not to introduce the letter because the dangers posed by the abuse allegation outweighed the likely minimal benefit of the character letters. (Id.) This decision was made “in full consultation with SrA Ollison,” and Appellant “understood the factors that were discussed and stated he was comfortable with what [Cap TW and Maj KH] had recommended.” (Id.)

### *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)).

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).

### *Analysis*

Appellant claims, pursuant to Unites States v. Grostefon, 12 M.J. 431 (C.M.A. 1982), that Capt TW and Maj KH were ineffective because they did not admit the four available character letters. (App. Br., Appendix at 2.) He claims this fact alone demonstrates trial defense counsel's performance was deficient, as required by Strickland. Strickland, 466 U.S. at 687. But, despite Appellant highlighting the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" he must overcome, Appellant has failed to overcome this presumption. (App. Br., Appendix at 2.)(citing Id. at 689.) To demonstrate a deficient performance, Appellant was required to establish his representation "amounted to incompetence under 'prevailing professional norms.'" Harrington, 131 S. Ct. at 788.

Appellant's entire argument rests on the failure of Capt TW and Maj KH to present additional evidence in sentencing, yet Appellant has entirely ignored the strategic reasons for which his trial defense counsel decided – with the approval of Appellant – to do so. Capt TW and Maj KH were prepared to present the witness letters but tactically decided not to do so when the government attempted to introduce damaging evidence regarding Appellant's history of domestic violence. (Capt TW Affidavit.) While trial defense counsel was initially able to keep the allegations of domestic abuse from the record, Cap TW and Maj KH anticipated the government would continue pursuing introduction of this damaging evidence. (Id.) Rather than

relaxing the rules of evidence so trial defense counsel could admit character letters and a photography array – which would likely result in the admittance of the domestic violence evidence – Capt TW, Maj KH, and Appellant all agreed it was in the best interest of Appellant if trial defense counsel presented only Appellant’s unsworn statement. (Maj Kimberly Hopkin Affidavit, dated 27 November 23.) The weakness of Appellant’s character letters supported the decision to present only Appellant’s unsworn statement, since trial defense counsel believed the character letters had the potential to be quite damaging to Appellant by leading to new domestic violence allegations, risking Appellant’s new job, and by creating several opportunities for the government to further criticize their client. (Capt TW Affidavit.)

Appellant claims “the record of trial reflects no reasonable basis for a tactical decision to present no sentencing evidence.” (App. Br., Appendix at 3.) But, by failing to introduce character witness letters Capt TW and Maj KH protected their client from additional damaging information on the record. (Capt TW Affidavit.) This demonstrates a sound approach to Appellant’s defense, and a reasonable, “tactical decision[] made at the trial.” Mansfield, 24 M.J. at 617. Thus, Capt TW and Maj KH did not perform deficiently, and their decision to use limited evidence during sentencing does not overcome the “strong presumption” that their conduct was within the “wide range of reasonable professional performance.” Strickland, 466 U.S. at 689. Additionally, because this was a tactical decision and this Court should not second-guess strategic or tactical decisions on review, Appellant’s ineffective assistance of counsel claim must fail. Strickland, 466 U.S. at 689; Morgan, 37 M.J. at 410.

Even if Appellant were able to show a deficiency in Capt TW or Maj KH’s performance, Appellant fails to fulfill the second prong of Strickland and does not demonstrate prejudice. Strickland, 466 U.S. at 687. Appellant claims that but for counsel’s failure to provide the

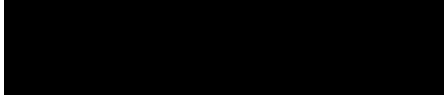
character letters, the result of his court-martial would have been different. (App. Br., Appendix at 3.) Appellant hinges his prejudice claim on the lack of knowledge the military judge had of Appellant's "experience working on vehicles." (App. Br., Appendix at 4.) But Appellant's own unsworn statement echoed the sentiments provided in character letters which highlight his experience repairing vehicles and motivation to help others. Specifically, Appellant states "[m]y dad taught me to...work[] with my hands as a mechanic," "I graduated high school and started working for my dad at his shop," "I...volunteer[ed] for everything I could," and "I have a future in Diesel Mechanics." (R. at 122-127.) Thus the unoffered character letters were cumulative with other matters submitted in this respect.

Moreover, Appellant claims that if the military judge had knowledge of his occasional practice of helping others fix mechanical issues, it is probable that a different sentence would have been adjudged. (App. Br., Appendix at 4.) But this claim is unpersuasive. For the reasons described in Issue I – notably Appellant's history of misconduct and lack of rehabilitation potential – it is unlikely the military judge would have adjudged a lesser sentence. This conclusion is bolstered by the likelihood that if the character letters were admitted, so too would the evidence regarding Appellant's history of domestic abuse and violence which would be even more damaging to Appellant's sentencing case. Thus, Appellant was not prejudiced because the helpful information within the character letters was already provided to the judge through Appellant's statement, and it is very unlikely that admittance of the four signed character letters would have reduced Appellant's sentence.

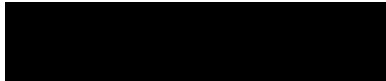
Appellant's trial defense counsel, Capt TW and Maj KH, were not deficient. But even if they were, Appellant was not prejudiced. Thus, this Court should deny Appellant's request to set aside his bad conduct discharge on ineffective assistance of counsel grounds.

**CONCLUSION**

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



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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 14 December 2023.



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<sup>2</sup> As a civilian extern, Ms. Thomas as a signing, non-attorney was always supervised during the appellate process, and undersigned counsel assumes responsibility for the content of the filing pursuant to this Court’s Rules of Practice and Procedure, Rule 14(c).