IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 2
Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force *Appellant*	)	No. ACM 40358 9 December 2022

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 an enlargement of time (EOT) to file a assignments of error. Appellant requests an enlargement for a period of 60 days, which will end on **16 February 2023.** The record of trial was docketed with this Court on 19 October 2022. 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,

[redacted]
MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

GRANTED
12 DEC 2022

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 9 December 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

12 December 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Technical Sergeant (E-6) CHAD L. REEDY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40358 Panel No. 2

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

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

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 12 December 2022.

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	
	)	Before Panel No. 2
Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force	)	No. ACM 40358
Appellant	)	6 February 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **18 March 2023.** The record of trial was docketed with this Court on 19 October 2022. From the date of docketing to the present date, 110 days have elapsed. On the date requested, 150 days will have elapsed.

On 15 June 2022, at a general court-martial at Royal Air Force Lakenheath, United Kingdom, a military judge convicted Appellant, Technical Sergeant (TSgt) Chad L. Reedy, consistent with his plea, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934 (2016 and 2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 20 July 2022.) The military judge sentenced TSgt Reedy to a dishonorable discharge, 2[illegible]nfinement, reduction to the grade of E-1, and a reprimand. (*Id.*) The co[illegible]authority denied a request to defer the reduction in grade but granted a

GRANTED
13 FEB 2023

waiver of all automatic forfeitures for the benefit of TSgt Reedy's dependent. (Convening Authority Decision on Action, ROT Vol. 1, 13 July 2022.)

The record of trial consists of 3 prosecution exhibits, 24 defense exhibits, and 6 appellate exhibits. The transcript is 107 pages. TSgt Reedy is not currently confined.

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

Respectfully submitted,

[redacted]

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 6 February 2023.

[redacted]
MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

8 February 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Technical Sergeant (E-6) CHAD L. REEDY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40358 Panel No. 2

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

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

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

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

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	
	)	Before Panel No. 2
Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force	)	No. ACM 40358
Appellant	)	8 March 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **17 April 2023.** The record of trial was docketed with this Court on 19 October 2022. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 15 June 2022, at a general court-martial at Royal Air Force Lakenheath, United Kingdom, a military judge convicted Appellant, Technical Sergeant (TSgt) Chad L. Reedy, consistent with his plea, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934 (2016 and 2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 20 July 2022.) The military judge sentenced TSgt Reedy to a dishonorable discharge, 2[illegible]finement, reduction to the grade of E-1, and a reprimand. (*Id.*) The co[illegible]uthority denied a request to defer the reduction in grade but granted a

GRANTED
9 MAR 2023

waiver of all automatic forfeitures for the benefit of TSgt Reedy's dependent. (Convening Authority Decision on Action, ROT Vol. 1, 13 July 2022.)

The record of trial consists of 3 prosecution exhibits, 24 defense exhibits, and 6 appellate exhibits. The transcript is 107 pages. TSgt Reedy is not currently confined.

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

Respectfully submitted,

[redacted]

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 8 March 2023.

[redacted]

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

8 March 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Technical Sergeant (E-6) CHAD L. REEDY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40358 Panel No. 2

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

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

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

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

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force *Appellant*	))))))))))	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)** Before Panel No. 2 No. ACM 40358 27 March 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **17 May 2023.** The record of trial was docketed with this Court on 19 October 2022. From the date of docketing to the present date, 159 days have elapsed. On the date requested, 210 days will have elapsed.

On 15 June 2022, at a general court-martial at Royal Air Force Lakenheath, United Kingdom, a military judge convicted Appellant, Technical Sergeant (TSgt) Chad L. Reedy, consistent with his plea, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934 (2016 and 2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 20 July 2022.) The military judge sentenced TSgt Reedy to a dishonorable discharge, 225 [illegible]nement, reduction to the grade of E-1, and a reprimand. (*Id.*) The con[illegible]hority denied a request to defer the reduction in grade but granted a

GRANTED
28 MAR 2023

waiver of all automatic forfeitures for the benefit of TSgt Reedy's dependent. (Convening Authority Decision on Action, ROT Vol. 1, 13 July 2022.)

The record of trial consists of 3 prosecution exhibits, 24 defense exhibits, and 6 appellate exhibits. The transcript is 107 pages. TSgt Reedy is not currently confined.

Counsel is currently assigned 25 cases, with 9 pending initial brief before this Court. Counsel has not yet begun review in this case. Three cases at the Air Force Court have priority over this case:

1. *United States v. Zimmermann*, ACM 40267. The record of trial consists of 31 prosecution exhibits, 18 defense exhibits, 68 appellate exhibits, and 2 court exhibits. The transcript is 1662 pages. Counsel has completed review of the record and begun drafting the assignments of error.
2. *United States v. Kroetz*, ACM 40301. The record of trial consists of 20 prosecution exhibits, 13 defense exhibits, and 5 appellate exhibits. The transcript is 90 pages. Counsel has not yet begun review of this record.
3. *United States v. Cornwell*, ACM 40335. The record of trial consists of 6 prosecution exhibits, 7 defense exhibits, and 22 appellate exhibits, and 1 court exhibit. The transcript is 338 pages. Counsel has not yet begun review of this record.

Additionally, counsel has previously approved leave from 31 March through 7 April 2023.

Through no fault of TSgt Reedy, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. TSgt Reedy was

specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review TSgt Reedy's case and advise him regarding potential errors.

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

Respectfully submitted,

LYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 27 March 2023.

[redacted]
M [redacted] LYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

27 March 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Technical Sergeant (E-6) CHAD L. REEDY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40358 Panel No. 2

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

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

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 27 March 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force *Appellant*	)))))))))	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)** Before Panel No. 2 No. ACM 40358 5 May 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **16 June 2023.** The record of trial was docketed with this Court on 19 October 2022. From the date of docketing to the present date, 198 days have elapsed. On the date requested, 240 days will have elapsed.

On 15 June 2022, at a general court-martial at Royal Air Force Lakenheath, United Kingdom, a military judge convicted Appellant, Technical Sergeant (TSgt) Chad L. Reedy, consistent with his plea, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934 (2016 and 2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 20 July 2022.) The military judge sentenced TSgt Reedy to a dishonorable discharge, 225 days' confinement, reduction to the grade of E-1, and a reprimand. (*Id.*) The convening authority denied a request to defer the reduction in grade but granted a

waiver of all automatic forfeitures for the benefit of TSgt Reedy's dependent. (Convening Authority Decision on Action, ROT Vol. 1, 13 July 2022.)

The record of trial consists of 3 prosecution exhibits, 24 defense exhibits, and 6 appellate exhibits. The transcript is 107 pages. TSgt Reedy is not currently confined.

Counsel is currently assigned 25 cases, with 9 pending initial brief before this Court. Counsel has not yet begun review in this case. Two cases at this Court have priority over this case:

1. *United States v. Kroetz*, ACM 40301. The record of trial consists of 20 prosecution exhibits, 13 defense exhibits, and 5 appellate exhibits. The transcript is 90 pages. Counsel has begun review of this record.
2. *United States v. Cornwell*, ACM 40335. The record of trial consists of 6 prosecution exhibits, 7 defense exhibits, and 22 appellate exhibits, and 1 court exhibit. The transcript is 338 pages. Counsel has not yet begun review of this record.

Through no fault of TSgt Reedy, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. TSgt Reedy was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review TSgt Reedy's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 5 May 2023.

[redacted]

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

5 May 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Technical Sergeant (E-6) CHAD L. REEDY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40358 Panel No. 2

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

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

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 27 March 2023.

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40358**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chad L. REEDY	)	
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 5 May 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 8th day of May, 2023,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **16 June 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

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force *Appellant*	))))))))))	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SIXTH)** Before Panel No. 2 No. ACM 40358 5 June 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **16 July 2023.** The record of trial was docketed with this Court on 19 October 2022. From the date of docketing to the present date, 229 days have elapsed. On the date requested, 270 days will have elapsed.

On 15 June 2022, at a general court-martial at Royal Air Force Lakenheath, United Kingdom, a military judge convicted Appellant, Technical Sergeant (TSgt) Chad L. Reedy, consistent with his plea, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934 (2016 and 2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 20 June 2022.) The military judge sentenced TSgt Reedy to a dishonorable discharge, 22 [illegible]nement, reduction to the grade of E-1, and a reprimand. (*Id.*) The conve[illegible]authority denied a request to defer the reduction in grade but granted a

GRANTED
6 JUN 2022

waiver of all automatic forfeitures for the benefit of TSgt Reedy's dependent. (Convening Authority Decision on Action, ROT Vol. 1, 13 July 2022.)

The record of trial consists of 3 prosecution exhibits, 24 defense exhibits, and 6 appellate exhibits. The transcript is 107 pages. TSgt Reedy is not currently confined.

Counsel is currently assigned 25 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. One case at this Court has priority over this case:

> *United States v. Cornwell*, ACM 40335. The record of trial consists of 6 prosecution exhibits, 7 defense exhibits, and 22 appellate exhibits, and 1 court exhibit. The transcript is 338 pages. Counsel has begun review of this record.

Additionally, counsel will be separating from active duty on 21 July 2023. However, counsel will be returning to JAJA as a reservist on a one-year tour and plans to maintain all cases through the transition. If the administrative logistics create any issues, another counsel from the office will assist in filing the necessary enlargements of time.

Through no fault of TSgt Reedy, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. TSgt Reedy was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review TSgt Reedy's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, 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 was sent via email to the Court and served on the Appellate Government Division on 5 June 2023.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

5 June 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Technical Sergeant (E-6) CHAD L. REEDY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40358 Panel No. 2

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

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

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 June 2023.

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION FOR EXAMINE SEALED MATERIALS**
v.	)	
	)	Before Panel No. 2
Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force	)	No. ACM 40358
Appellant	)	9 June 2023

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rule 23.3(f)(1) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel hereby moves to examine the attachments to Prosecution Exhibit 1 in volume 1 of the Record of Trial (ROT). The attachments are the substantive evidence upon which the charges rest, and they are discussed in the stipulation of fact. (Prosecution Exhibit 1.) Both trial counsel and trial defense counsel had access to the exhibits for the court-martial. The military judge sealed the materials due to their contraband nature. (R. at 30.)

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities, undersigned counsel asserts that viewing the referenced materials is reasonably necessary to assess whether TSgt Reedy's guilty plea was provident.

To determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, 10 U.S.C. § 866(d), appellate defense counsel must examine "the entire record."

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

United States v. May, 47 M.J. 478, 481 (C.A.A.F. 1998). Undersigned counsel must review the sealed materials to provide "competent appellate representation." *See id.* Accordingly, good cause exists in this case since undersigned counsel cannot fulfill his duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing these attachments.

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

Respectfully submitted,

[redacted]

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 9 June 2023.

[redacted]

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

12 June 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Technical Sergeant (E-6) CHAD L. REEDY, USAF *Appellant.*	)))))))))	UNITED STATES' RESPONSE TO APPELLANT'S MOTION TO EXAMINE SEALED MATERIAL ACM 40358 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Sealed Material. The United States does not object to Appellant's counsel reviewing the materials listed in Appellant's motion –which appear to have been available to all parties at trial – so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

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

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

[redacted]

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

For: [redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 12 June 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION FOR EXAMINE SEALED MATERIALS**
v.	)	
	)	Before Panel No. 2
Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force	)	No. ACM 40358
Appellant	)	9 June 2023

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rule 23.3(f)(1) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel hereby moves to examine the attachments to Prosecution Exhibit 1 in volume 1 of the Record of Trial (ROT). The attachments are the substantive evidence upon which the charges rest, and they are discussed in the stipulation of fact. (Prosecution Exhibit 1.) Both trial counsel and trial defense counsel had access to the exhibits for the court-martial. The military judge sealed the materials due to their contraband nature. (R. at 30.)

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities, undersigned counsel asserts that viewing the referenced materials is reasonably necessary to assess whether TSgt Reedy's guilty plea was provident.

To determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, 10 U.S.C. § 866(d), appellate defense counsel must examine "the entire record."

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

United States v. May, 47 M.J. 478, 481 (C.A.A.F. 1998). Undersigned counsel must review the sealed materials to provide "competent appellate representation." *See id.* Accordingly, good cause exists in this case since undersigned counsel cannot fulfill his duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing these attachments.

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

Respectfully submitted,

[redacted]
MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 9 June 2023.

[redacted]

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

12 June 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Technical Sergeant (E-6) CHAD L. REEDY, USAF *Appellant.*	)))))))))	UNITED STATES' RESPONSE TO APPELLANT'S MOTION TO EXAMINE SEALED MATERIAL ACM 40358 Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Sealed Material. The United States does not object to Appellant's counsel reviewing the materials listed in Appellant's motion –which appear to have been available to all parties at trial – so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

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

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

[redacted]

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

For: [redacted]

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

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 12 June 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES ANSWER TO SHOW CAUSE ORDER**
v.	)	Before Panel No. 2
Technical Sergeant (E-6) **CHAD L. REEDY,** United States Air Force *Appellant.*	)	No. ACM 40358 23 June 2023

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

ISSUE PRESENTED

WHETHER THIS COURT SHOULD REMAND THE RECORD OF TRIAL OR TAKE OTHER APPROPRIATE ACTION BECAUSE OF A "SCRIVENER'S ERROR" ON PROSECUTION EXHIBIT 1.

STATEMENT OF THE CASE

On 20 July 2022, a military judge, sitting at a general court-martial at RAF Lakenheath, United Kingdom, found Appellant guilty, consistent with his pleas, of Charge I, Specification 3, for possessing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ). (*Entry of Judgment*, 15 June 2022, ROT Vol. 1). The military judge sentenced Appellant to 225 days of confinement, a dishonorable discharge, and a reduction in grade to E-1. His automatic forfeitures of pay and allowance were waived for a period of six months and paid to his dependent wife and child. (Id.)

STATEMENT OF FACTS

On 9 June 2023, Appellant submitted a motion to examine sealed materials in this case, including Attachment 5 to Prosecution Exhibit 1, the Stipulation of Fact, which the United States

did not oppose. (Order, 14 June 2023). In reviewing Appellant's motion, this Court discovered Attachment 5 contained only 14 image and 4 video files contrary to the description of the attachment on the face of the Stipulation of Fact, which read, "Image and Video Files Possess by the Accused, undated, 15 image and 5 video files [contraband]." (Id.)

On 14 June 2023, this Court ordered the Untied States to show good cause as to why it should not remand the record of trial for correction or take other corrective action. (Id.)

On 21 June 2023, Capt BB provided a declaration stating that the description of Attachment 5 on the face of the Stipulation of Fact contained a "scrivener's error," because there were and should only be 14 image and 4 video files located on Attachment 5. (Appendix, Motion to Attach, dated 22 June 2023 [hereinafter "Appendix"]).[1] He explained that paragraphs 13(a)-(r) of the Stipulation of Fact describe in detail the files on Attachment 5, which accurately reflect 14 image files and 4 video files. (Id.) Prior to trial, Capt BB confirmed the contents of Attachment 5 with trial defense counsel, and they both determined each description was correct and matched the right file within Attachment 5. (Id.)

ARGUMENT

APPELLANT'S RECORD OF TRIAL SHOULD NOT BE REMANDED FOR CORRECTION OR OTHER ACTION TAKEN.

Standard of Review

Whether the record of trial (ROT) is incomplete is a question of law that the Court reviews de novo. United States v. Henry, 53 M.J. 108, 110 (C.A.A.F. 2000).

[1] The United States is filing a motion to attach the declaration contemporaneously with this answer.

Law and Analysis

A complete record of proceedings, including all exhibits and a verbatim transcript, must be prepared for any general or special court-martial where a sentence of "death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months" is adjudged. Article 54(c)(2), UCMJ. Appellate courts understand that inevitably records will be imperfect, and therefore review for substantial omissions. *See* United States v. Lashley, 14 M.J. 7, 8 (C.M.A. 1982). When a record of trial "is missing an exhibit, this Court evaluates whether the omission is substantial." United States v. Lovely, 73 M.J. 658, 676 (A.F. Ct. Crim. App. 2021) (citing Henry, 53 M.J. at 111). An omission is qualitatively substantial when it is "'related directly to the sufficiency of the Government's evidence on the merits,' and 'the testimony could not ordinarily have been recalled with any degree of fidelity.'" United States v. Davenport, 73 M.J. 373, 377 (C.A.A.F. 2014). (quoting United States v. Lashley, 14 M.J. 7, 9 (C.M.A. 1982)). While "[o]missions are quantitatively substantial unless 'the totality of omissions . . . becomes so unimportant and so uninfluential when viewed in the light of the whole record, that it approaches nothingness.'" Id. (quoting United States v. Nelson, 3 C.M.A. 482, 13 (C.M.A. 1953).

Here, Prosecution Exhibit 1, Attachment 5, contains all the image files as they were admitted at court after being reviewed by government trial counsel and trial defense counsel, and the only files the military judge relied on. (Appendix). There was no substantial omission from the record that would render the ROT incomplete.

Any discrepancy in what is contained in Attachment 5 and what is in the description of the attachment can be summed up as human error when enumerating the files in the attachment. Capt BB, government trial counsel, explained in his declaration that there were only ever meant to be 14 image and 4 video files on Attachment 5, and not 15 image and 5 video files as listed.

(Appendix). Furthermore, he points to paragraphs 13(a)-(r) that describe each file on Attachment 5. (Id.) There are only 14 image files and 4 video files described in paragraphs 13(a)-(r), which supports that government counsel merely mislabeled the number of files in his description of Attachment 5. (Pros. Ex. 1). Therefore, since there has not been a substantial omission from the ROT, this Court is able to conduct an informed review of Appellant's case.

Since the United States did not fail to provide the attachments to the stipulation of fact that were admitted at trial, there has not been a substantial omission from the ROT that renders it incomplete. Therefore, there is good cause not to remand the case nor require any corrective action beyond granting the United States' Motion to Attach Capt BB's declaration. Granting the United States' Motion to Attach, which was filed contemporaneously with this Answer, remedies any doubt that the ROT is complete and rebuts any presumption of prejudice.

CONCLUSION

WHEREFORE, the United States respectfully requests this Court find there is no substantial omission from the ROT, and it needs no further corrective action.

[redacted]
OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
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MARY ELLEN PAYNE
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Government Trial and Appellate Operations Division
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, and to the Air Force Appellate Defense Division on 23 June 2023 via electronic filing.

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES MOTION TO ATTACH DOCUMENTS**
v.	)	Before Panel No. 2
Technical Sergeant (E-6) **CHAD L. REEDY,** United States Air Force *Appellant.*	)	No. ACM 40358 23 June 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, the United States respectfully moves to attach the Appendix to this motion. It is a one-page declaration from Capt BB, dated 21 June 2023, where he explains the "scrivener's error" found on Prosecution Exhibit 1, the Stipulation of Fact. The error is that the face of the Stipulation of Fact should list only 14 image and 4 video files for Attachment 5; however, it mistakenly describes Attachment 5 as "5. Image and Video Files Possessed by the Accused, undated, 15 image and 5 video files [contraband]."

On 14 June 2023, this Court issued a Show Cause Order for the United States to show good cause as to why this Court should not remand the record of trial for correction or take other corrective action. (Order, dated 14 June 2023). The order identified that Prosecution Exhibit 1, Attachment 5, only contained 14 image and 4 video files despite being labeled as containing 15 image and 5 video files. (Id.) This Court then cited to the standard for a substantial omission,

ntial omission renders a record of trial incomplete and raises a presumption of

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prejudice that the Government must rebut." (Id. (*citing* United States v. Henry, 53 M.J. 108, 111) (C.A.A.F. 2000) (citations omitted)).

Attachment of the appendix is both relevant and necessary for this Court's review of the appellate record (1) to show there has not been an omission from the record, but merely a scrivener's error; and (2) to rebut any presumption of prejudice raised by the appearance of an omission. Attachment of the declaration explains the discrepancy between the description of Attachment 5 and the files actually located on the attachment. As Capt BB explains, paragraphs 13(a)-(r) of the Stipulation of Fact describe in detail the only 14 image and 4 video files on Attachment 5. (Appendix). Furthermore, prior to trial, Capt BB and trial defense counsel compared those descriptions against the files on Attachment 5 to ensure each file had an accurate description and only the files that were supposed to be there were on Attachment 5. Attachment of this Appendix is also consistent with United States v. Jessie, 79 M.J. 437, 445 (C.A.A.F. 2020), because it relates to "issues raised by materials in the record but not fully resolvable by those materials."

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

[redacted]

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
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MARY ELLEN PAYNE
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United States Air Force
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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 23 June 2023.

[redacted]

OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 2
Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force *Appellant*	)	No. ACM 40358 14 July 2023

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

ASSIGNMENTS OF ERROR

I.

WHETHER A PLEA AGREEMENT REQUIRING A DISHONORABLE DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THUS VIOLATES PUBLIC POLICY.

II.

WHETHER A PLEA AGREEMENT THAT CONDITIONS DISMISSAL WITH PREJUDICE UPON COMPLETION OF APPELLATE REVIEW IS UNENFORCEABLE.

III.

WHETHER THE RECORD OF TRIAL'S OMISSION OF THE COURT-MARTIAL AUDIO IS A SUBSTANTIAL OMISSION WARRANTING RELIEF.

STATEMENT OF THE CASE

On 15 June 2022, at a general court-martial at Royal Air Force Lakenheath, United Kingdom, a military judge convicted Appellant, Technical Sergeant (TSgt) Chad L. Reedy, consistent with his plea, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10

U.S.C. § 934 (2016 and 2019).[1] (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 20 July 2022.) The military judge sentenced TSgt Reedy to a dishonorable discharge, 225 days' confinement, reduction to the grade of E-1, and a reprimand. (*Id.*) The convening authority denied a request to defer the reduction in grade but granted a waiver of all automatic forfeitures for the benefit of TSgt Reedy's dependent. (Convening Authority Decision on Action, ROT Vol. 1, 13 July 2022.)

STATEMENT OF FACTS

TSgt Reedy pleaded guilty to possession of child pornography. (R. at 15.) Prosecution Exhibit 1 identified the specific images that formed the basis for the charge: a combination of actual minors involved in sexual acts and obscene animated images representing children involved in sexual acts. (Prosecution Exhibit (PE) 1 at 3–5.) These images were among more than 70,000 pornographic images and videos found on TSgt Reedy's devices, the overwhelming majority of which were not child pornography. (*Id.* at 2–3.) During his *Care* inquiry, TSgt Reedy made clear that he did not seek out child pornography, but that he was aware the images were child pornography when he received them and decided to keep them. (R. at 49–50.)

[1] All references to the punitive articles are identified by year. Unless otherwise stated, all other references to the UCMJ and the Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

ARGUMENT

I.

A PLEA AGREEMENT REQUIRING A DISHONORABLE DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THUS VIOLATES PUBLIC POLICY.

Additional Facts

The plea agreement required the military judge to adjudge a dishonorable discharge. (Appellate Exhibit (AE) V at 2, ¶ 4.b.) The military judge discussed the provision at some length. (R. at 69–70.) TSgt Reedy's defense counsel opined that the provision did not violate law or public policy. (R. at 69.) The military judge then questioned TSgt Reedy directly about his understanding. (R. at 70–72.) The other terms of the plea agreement required the military judge to issue a sentence to confinement between 180 and 240 days. (AE V at 2, ¶ 4.a.)

Standard of Review

Whether a condition of a plea agreement violates R.C.M. 705(c)(1)(B) is a question of law that this Court reviews de novo. *See United States v. Tate*, 64 M.J. 269, 271 (C.A.A.F. 2007).[2]

[2] This case implicates R.C.M. 705 from the 2019 *MCM*. However, the body of law on the plea agreement's predecessor, the pretrial agreement, is still applicable, as this Court has recognized. *See, e.g.*, *United States v. Marable*, No. ACM 39954, 2021 CCA LEXIS 662, at *10 (A.F. Ct. Crim. App. 10 Dec. 2021) (unpub. op.) ("We find our superior court's precedent with respect to [pretrial agreements] instructive when interpreting plea agreements.").

Law

An accused may enter into a plea agreement with the convening authority. R.C.M. 705(a). The agreement may require an accused or the convening authority to fulfill promises or conditions unless barred by the Rule. R.C.M. 705(b), (c). A plea agreement may contain a provision for a maximum punishment, a minimum punishment, or both. R.C.M. 705(d)(1).

Court-martial sentences must be individualized; they must be appropriate to the offender and the offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). A court-martial shall impose punishment that is "sufficient, *but not greater than necessary*, to promote justice and to maintain good order and discipline in the armed forces . . . ." Article 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1) (emphasis added); R.C.M. 1002(f). Congress has established mandatory minimum sentences for violations of certain punitive articles under the Code; Article 134 is not among them. Article 56(b), UCMJ.

Terms in a plea agreement cannot be contrary to public policy. R.C.M. 705(e)(1). Pretrial agreement provisions are contrary to public policy if they "interfere with court-martial fact-finding, sentencing, or review functions or undermine public confidence in the integrity and fairness of the disciplinary process." *See United States v. Raynor*, 66 M.J. 693, 697 (A.F. Ct. Crim. App. 2008) (citing *United States v. Cassity*, 36 M.J. 759, 762 (N.M.C.M.R. 1992)). "To the extent that a term in a pretrial agreement violates public policy, it will be stricken from the pretrial agreement and not enforced." *United States v. Edwards*, 58 M.J. 49, 52

(C.A.A.F. 2003) (citing *United States v. Clark*, 53 M.J. 280, 283 (C.A.A.F. 2000); R.C.M. 705(c)(1)(B) (2002)).

"A fundamental principle underlying [the Court of Appeals for the Armed Forces's (CAAF)] jurisprudence on pretrial agreements is that 'the agreement cannot transform the trial into an empty ritual.'" *United States v. Davis*, 50 M.J. 426, 429 (C.A.A.F. 1999) (citing *United States v. Allen*, 25 C.M.R. 8, 11 (C.M.A. 1957)). It is the military judge's "responsibility to police the terms of pretrial agreements to insure compliance with statutory and decisional law as well as adherence to basic notions of fundamental fairness." *United States v. Partin*, 7 M.J. 409, 412 (C.M.A. 1979) (citation omitted).

Various Courts of Criminal Appeals (CCAs) have struck down provisions in an agreement as violating public policy. *See, e.g.*, *Cassity*, 36 M.J. at 765 (holding a sentencing limitation promising the convening authority would only suspend a punitive discharge if more than four months confinement was adjudged at trial violated public policy and the military judge erred by not striking it from the agreement). In *United States v. Libecap*, the Coast Guard Court of Criminal Appeals (CGCCA) addressed a pretrial agreement that required the accused to request a punitive discharge. 57 M.J. 611, 615 (C.G. Ct. Crim. App. 2002). The CGCCA wrote that "whether or not to impose a punitive discharge as a part of the sentence in a court-martial is always a significant sentencing issue, and often is the most strenuously contested sentencing issue." *Id.* at 615. While the provision at issue still allowed the presentation of a complete presentencing case, the CGCCA believed the

request for a bad-conduct discharge undercut any presentation. The court wrote:

> we are convinced that although such a sentencing proceeding might in some sense be viewed as complete, the requirement to request a bad conduct discharge would, in too many instances, largely negate the value of putting on a defense sentencing case, and create the impression, if not the reality, of a proceeding that was little more than an empty ritual, at least with respect to the question of whether a punitive discharge should be imposed. Therefore, we conclude that such a requirement may, as a practical matter, deprive the accused of a complete sentencing proceeding.

Id. at 615–16. It reasoned that the Government had placed the appellant in a position where he would either be forced to forego a desirable deal or sacrifice a complete presentencing hearing. *Id*. For these reasons, the term violated public policy because the public would lose confidence in the integrity and fairness of the appellant's court-martial. *Id*.

Analysis

The mandatory dishonorable discharge provision of the agreement is contrary to public policy; this Honorable Court should not enforce it. The term hollowed out the presentencing proceeding and deprived TSgt Reedy of his opportunity to secure a fair and just sentence. Addressing a similar, but distinct, issue, *Libecap* provides helpful insight for this case. There, the CGCCA found a provision requiring an accused to request a punitive discharge offended due process by curtailing complete presentencing proceedings. 57 M.J. at 615–16. Such a mandatory request for punitive discharge "seriously undercut" any effort to avoid a punitive discharge. *Id*. at 615. Requiring the request for a punitive discharge, like the *mandatory* punitive discharge here, "create[s] the impression, if not the reality, of a proceeding that was

little more than an empty ritual, at least with respect to the question of whether a punitive discharge should be imposed." *Id.* at 616. This presentencing session was, for all intents and purposes, the empty ritual prohibited by *Allen*, *Davis*, and their progeny. 25 C.M.R. at 11; 50 M.J. at 429. If it violates public policy to require *requesting* a punitive discharge, surely it violates public policy to mandate the result. *But see United States v. Geier*, No. ACM S32679 (f rev), 2022 CCA LEXIS 468, at *11–12 (A.F. Ct. Crim. App. 2 Aug. 2022) (unpub. op.) (rejecting this argument).

Moreover, in our representative democracy, statutes codified by the legislature and rules enacted pursuant to those laws by the executive, *are* public policy. And Congress chose *not* to make this Article 134, UCMJ, offense carry a mandatory dishonorable discharge. Article 56(b), UCMJ. The *MCM* has, for generations, cherished the concept of individualized sentencing. *Snelling*, 14 M.J. at 268. Congress passed Article 56(c)(1), UCMJ, to expressly mandate, "A court-martial *shall* impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces." (Emphasis added.) R.C.M. 1002(f) supports this legislative proclamation. If a court-martial *shall* impose punishment that is sufficient, but not greater than necessary, to achieve the principles of sentencing, it runs afoul of public policy to preclude the sentencing authority from determining what is sufficient, but not greater than necessary, to achieve the principles of sentencing. No one in this case knows if the military judge believed a dishonorable discharge was "not greater than necessary." All anyone knows is he was bound by the term mandating it. (R. at 69–70.) This Court should

find that a term that prevents the sentencing authority from adjudging—in its *sole discretion*—a punishment that is sufficient, but not greater than necessary, violates public policy and is inconsistent with the mandate of Article 56(c)(1), UCMJ.

WHEREFORE, TSgt Reedy requests this Honorable Court sever the term for the mandatory dishonorable discharge and uphold the remainder of the plea agreement.

II.

A PLEA AGREEMENT THAT CONDITIONS DISMISSAL WITH PREJUDICE UPON COMPLETION OF APPELLATE REVIEW IS UNENFORCEABLE.

Additional Facts

As part of the plea agreement, the Convening Authority agreed to dismiss two specifications of the Charge, both involving distribution of child pornography. (AE V at 1, ¶ 2.) However, the plea agreement specified that prejudice would not attach "until completion of appellate review of the offense to which I have plead[ed] guilty." (*Id.* ¶ 2.b.) When explaining this provision to TSgt Reedy, the military judge stated that the effect was that "[i]f for some reason . . . your plea of guilty at any time becomes unacceptable, trial counsel will be clear to proceed on the charge and all specifications." (R. at 63.)

Standard of Review

Whether a condition of a plea agreement impermissibly deprives an accused of the complete and effective exercise of post-trial and appellate rights in violation of R.C.M. 705(c)(1)(B) is a question of law reviewed de novo. *See Tate*, 64 M.J. at 271.

Law

Article 66(d), UCMJ, provides a CCA "may affirm only such findings of guilty, and 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." 10 U.S.C. § 866(d)(1). "Thus, the Uniform Code provides for an automatic review which is unparalleled elsewhere." *United States v. Mills*, 12 M.J. 1, 4 (C.M.A. 1981). "A complete Article 66, UCMJ, review is a 'substantial right' of an accused, and a CCA may not rely on only selected portions of a record or allegations of error alone." *United States v. Chin*, 75 M.J. 220, 222 (C.A.A.F. 2016) (internal citation omitted).

Thus, while an appellant may be prevented from raising an issue on appeal by operation of a "waive all waivable motions" provision in his plea agreement, he cannot "waive a CCA's statutory mandate unless . . . [he] waives the right to appellate review altogether—and that election cannot be made until after the trial and sentencing." *Id.* at 223. "If an appellant elects to proceed with Article 66, UCMJ, review, as in this case, then the CCA is commanded by statute to review the entire record and approve only that which 'should be approved.'" *Id.* (emphasis in original). Even if an appellant has no constitutional right to an appeal in the first instance, once that right is conferred upon him by statute, then this statutory right of appeal must still conform to the demands of due process and equal protection. *See United States v. Rodriguez-Amy*, 19 M.J. 177, 178 (C.M.A. 1985).

R.C.M. 1115(c) provides that "[n]o person may compel, coerce, or induce an accused by force, promises of clemency, or otherwise to waive or withdraw from

appellate review." As the Navy-Marine Corps Court of Military Review recognized, "[t]he rules of the marketplace . . . are not permitted to operate unregulated in the military justice system. Despite the mutual assent of the parties, the propriety of a particular pretrial agreement provision and its operation in the case must be assessed in view of the basic tenets of the military justice system." *Cassity*, 36 M.J. at 762 (citing *United States v. Dawson*, 10 M.J. 142, 144–45 (C.M.A. 1981)).

Over 40 years ago, the CMA was presented with a case in which a pretrial agreement provided, "should the accused's plea of guilty to unpremeditated murder or sodomy be changed by anyone to not guilty, the charge of premeditated murder and the referral of the case as capital may be reinstated by the Convening Authority." *Partin*, 7 M.J. at 411. At trial, the military judge advised the appellant that "if for any reason, any appellate authority overturns the finding of guilty . . . you could later be tried on a charge of premeditated murder." *Id.* at 411. The military judge later asked the appellant whether he understood "that the right has been reserved to reinstate a premeditated murder charged if, at any appellate stage of the trial, they set aside the findings pursuant to the guilty pleas[.]" *Id.* Rather than mount a facial attack, the appellant argued that this provision's "interpretation by the military judge and the acquiescence of the appellant and both counsel at the trial constituted the incorporation of an illegal condition into the pretrial agreement." *Id.* While the Court declined to facially "address [this provision] at the present time" it also made a point of saying "we do not condone it in any way." *Id.* at 411 n.3.

The CMA ultimately determined that the military judge's "interpretation in no

way reflects the express terms of the pretrial agreement and is erroneous as a matter of military procedure"—it did not state anything about an appellate court's later determination as to whether such pleas were provident. *Id.* at 412. Yet, the Court still recognized that if the military judge's interpretation of the pretrial agreement had been correct, there would be cause for concern that it impermissibly interfered with the exercise of military appellate rights:

> The appellant also contends that the presence of such a condition in a pretrial agreement imposes an impermissible burden on his statutory rights to automatic and discretionary review of his court-martial. *See* Articles 66 and 67, UCMJ, 10 U.S.C. §§ 866 and 867, respectively. *Indeed, if this misinterpretation by the military judge was an actual term of the pretrial agreement, this argument may have merit.*

Id. (emphasis added).

The presence of an impermissible term in a plea agreement is not necessarily fatal to the result of the court-martial. *See Tate,* 64 M.J. at 272. Where a term or condition of a plea agreement is impermissible and thus unenforceable, courts may determine whether the presence of the unenforceable term renders the entire plea agreement void. *See United States v. Holland*, 1 M.J. 58, 60 (C.M.A. 1975) (concluding the presence of an unenforceable term in a plea agreement required the voiding of the agreement and the authorization of a rehearing); *United States v. McLaughlin*, 50 M.J. 217, 218–19 (C.A.A.F. 1999) (noting that an impermissible term may be treated as null without vitiating the remainder of the agreement); *Tate*, 64 M.J. at 272 (concluding that impermissible terms may be stricken from a pretrial agreement without impairing the balance of the agreement and the accused's plea).

Analysis

A plea agreement that, as here, provides onerous conditions on the exercise of appellate rights is unenforceable. Specifications 1 and 2 of the Charge were withdrawn and dismissed, but TSgt Reedy must now consider whether it is worth fully exercising his appellate rights, as success in challenging his case could resurrect the two serious distribution charges.

Article 66, UCMJ, affords Appellant a "substantial right" he could not waive—even if he wanted to—prior to being sentenced. *Chin*, 75 M.J. at 222–23. No one is permitted to "compel, coerce, or induce an accused by force, promises of clemency, *or otherwise* to waive or withdraw from" this substantial right. *See* R.C.M. 1115(c) (emphasis added). The *MCM* likewise provides that a term or condition in a plea agreement which deprives the accused of the right to "the complete *and effective* exercise of post-trial and appellate rights" shall not be enforced. R.C.M. 705(c)(1)(B) (emphasis added). Paragraph 2 compromises the complete and effective exercise of those rights. *But see United States v. Goldsmith*, No. ACM 40148, 2023 CCA LEXIS 8, at *11–14 (A.F. Ct. Crim. App. 11 Jan. 2023) (unpub. op.) (rejecting this argument).

TSgt Reedy has raised two other issues in this appeal. If this Court finds merit in either, it should sever the portion of the plea agreement that conditions dismissal with prejudice on a certain appellate result.

WHEREFORE, TSgt Reedy respectfully requests this Court refuse to enforce Paragraph 2b of the Plea Agreement and indicate in its decretal paragraph that Specifications 1 and 2 of the Charge are dismissed with prejudice (even if providing

relief on the other assignments of error).

III.

THE RECORD OF TRIAL'S OMISSION OF THE COURT-MARTIAL AUDIO IS A SUBSTANTIAL OMISSION WARRANTING RELIEF.

Additional Facts

The audio is missing from the record of trial. A paralegal at the base legal office produced a memorandum explaining that the audio recording she received from the court reporter did not work. (Memorandum For Record, TSgt AS, ROT Vol. 1, dated 20 Sep. 2022.) The court reporter also provided a memorandum explaining that her hard drive crashed and she lost the audio of the court-martial. (Signed statement of LN, ROT Vol. 1, dated 9 Sep. 2022.)

Standard of Review

Whether a record of trial is incomplete or not substantially verbatim is reviewed de novo. *United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law and Analysis

The record of trial is "the very heart of the criminal proceedings and the single essential element to meaningful appellate review." *United States v. Credit*, 4 M.J. 118, 119 (C.M.A. 1977). A complete record of proceedings is required for every court-martial in which the sentence adjudged includes "a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months." Article 54(c)(2), 10 U.S.C. § 854(c)(2). A complete record shall include "[a] substantially verbatim recording of the court-martial proceedings except sessions

closed for deliberations and voting." R.C.M. 1112(b)(1). Under the former R.C.M. 1103(b)(2)(B),[3] "[r]ecords of trial that are not substantially verbatim or are incomplete cannot support a sentence that includes a punitive discharge or confinement in excess of six months." *Henry*, 53 M.J. at 111. A substantial omission in a record of trial raises a presumption of prejudice to an appellant, which the Government must rebut. *Id.* (citations omitted). "Moreover, since in military criminal law administration the Government bears responsibility for preparing the record of trial, it is fitting that every inference be drawn against the Government with respect to the existence of prejudice because of an omission." *United States v. McCullah*, 11 M.J. 234, 237 (C.M.A. 1981) (citation omitted).

The absence of *any* court-martial audio renders the record incomplete. *See United States v. Matthew*, No. ACM 39796 (f rev), 2022 CCA LEXIS 425, at *11–12 (A.F. Ct. Crim. App. 21 Jul. 2022) (unpub. op.). In *Matthew*, this Court held the omission of audio of the arraignment was quantitatively substantial. *Id.* Interpreting the 2016 *MCM*, this Court followed the procedures in R.C.M. 1103 and remanded to the Judge Advocate General. *Id.* at *15–16. Here, like *Matthew*, omitting the entire audio is substantial. While the transcript does exist here (and did not in *Matthew*), the transcript is not part of the record of trial; instead, it is one of the attachments for appellate review under R.C.M. 1112(f).

[3] The contents of the record of trial were previously detailed in R.C.M. 1103(b)(2) (2016 *MCM*). These required contents are now found in R.C.M. 1112(b) (2019 *MCM*).

The question becomes one of remedy. Under the applicable version of R.C.M. 1112, a "record of trial found to be incomplete or defective before or after certification may be corrected to make it accurate. A superior competent authority may return a record of trial to the military judge for correction under this rule." R.C.M. 1112(d)(2). If this route is chosen, the "military judge shall give notice of the proposed correction to all parties and permit them to examine and respond to the proposed correction." *Id.* The military judge has the following remedies available:

> (A) reconstructing the portion of the record affected;
>
> (B) dismissing affected specifications;
>
> (C) reducing the sentence of the accused; or
>
> (D) if the error was raised by motion or on appeal by the defense, declaring a mistrial as to the affected specifications.

R.C.M. 1112(d)(3).

To be clear, Appellant does not seek a windfall. While under the old version of the Rules the convening authority could not approve a punitive discharge or confinement in excess of six months, R.C.M. 1103(b)(2)(B) (2016 *MCM*), under the current R.C.M. 1112 the options are circumscribed. Indeed, the Rules seem to contemplate a recording lost *before* transcription. That is a distinct problem necessitating a different solution. Here, the transcript exists and Appellant has no reason to question its contents. It was provided to defense counsel for review before certification. (Defense Counsel's Examination of Record, ROT Vol. 2, dated 14 July 2022.)

Thus, Appellant raises this Assignment of Error more in anticipation of this Court discovering the error and being faced with crafting a remedy. Counsel has not located instructive cases applying R.C.M. 1112(d)(3) to this type of situation. This Court has frequently remanded under R.C.M. 1112(d)(2) for correction of the record,[4] but the situation here differs because the record is uncorrectable. The question is which remedies are available under R.C.M. 1112(d)(3). Although framed in the disjunctive, R.C.M. 1112(d)(3)(D) provides a solution available only when this issue is raised on appeal—a mistrial. TSgt Reedy explicitly disclaims this option. It is neither his desire, nor presumably the Government's, to rehear the case. While this Court could send the case back for the military judge to either dismiss a specification or modify the sentence, it need not.

Knowing the record is incomplete, this Court may resolve the matter itself without remand. Under R.C.M. 1112, when faced with an incomplete record, a superior competent authority—this Court—*may* return the record to the military judge. This Court can, and should, exercise its broad remit under Article 66, UCMJ, and affirm the conviction and provide any sentence relief appropriate for the Government's failure to provide a record of trial within the meaning of R.C.M. 1112.

WHEREFORE, TSgt Reedy respectfully requests this Honorable Court approve a bad-conduct discharge instead of a dishonorable discharge.

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[4] *See, e.g.*, *United States v. Welsh*, No. ACM S32719, 2022 CCA LEXIS 631, at *2–3 (A.F. Ct. Crim. App. 26 Oct. 2022) (unpub. op.) (remanding to the Chief Trial Judge for correction of missing exhibits pursuant to R.C.M. 1112(d)).

Respectfully submitted,

LYTH, 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 was sent via email to the Court and served on the Appellate Government Division on 14 July 2023.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, **FOR** *Appellee*,	)	**UNITED STATES' MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 2
Technical Sergeant (E-6) **CHAD L. REEDY** United States Air Force *Appellant.*	)	No. ACM 40358
	)	2 August 2023

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

Pursuant to Rule 23.3(m)(5), the United States respectfully requests an 19-day enlargement of time, to respond in the above captioned case. This case was docketed with the Court on 2 November 2022. Since docketing, Appellant has been granted five enlargements of time. Appellant filed his brief with this Court on 14 July 2023. This is the United States' first request for an enlargement of time. As of the date of this request, 287 days have elapsed. The United States' response in this case is currently due on 14 August 2023, based on 13 August 2023 being a Sunday. If the enlargement of time is granted the United States' response will be due on 1 September 2023, and 317 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. The undersigned counsel is newly assigned appellate government counsel and arrived on station on 24 July 2023. From 25 July 2023 to 1 August 2023, she was on permissive house hunting leave. On 2 August 2023 undersigned counsel was assigned to this case. Counsel returned from an overseas assignment ave three household good deliveries in the next month each one lasting approximately Undersigned counsel will also attend four days of mandatory training, the Joint

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Appellate Advocacy Training and JAJG Appellate Newcomer's Training. The trial transcript in this case is 107 pages, and Appellant has raised three assignments of error in an 18-page brief. As this is her first brief, it will take assigned counsel additional time to review the record and answer all three assignments of error.

There is no other appellate government counsel who would be able to file a brief sooner because they are also assigned extensive briefs. Out of four active duty appellate government counsel, three are new to the position and arrived on station within the past week. Reservists are being engaged to help with the workload, but JAJG currently has 13 assignments of error briefs pending before this Court.

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

[redacted]

VANESSA BAIROS, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
[redacted]

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 2 August 2023.

VANESSA BAIROS, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force *Appellant*	))))))))))	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF** Before Panel No. 2 No. ACM 40358 30 August 2023

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

Pursuant to Rule 23.3(m)(1) and (m)(4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file a reply to the Government Answer, filed on 30 August 2023. Appellant requests an enlargement for a period of five days, which will end on 11 September 2023. The record of trial was docketed with this Court on 19 October 2022. From the date of docketing to the present date, 315 days have elapsed. On the date requested, 327 days will have elapsed.

On 15 June 2022, at a general court-martial at Royal Air Force Lakenheath, United Kingdom, a military judge convicted Appellant, Technical Sergeant (TSgt) Chad L. Reedy, consistent with his plea, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934 (2016 and 2019). (Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, .) The military judge sentenced TSgt Reedy to a dishonorable discharge, nfinement, reduction to the grade of E-1, and a reprimand. (*Id.*) The

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convening authority denied a request to defer the reduction in grade but granted a waiver of all automatic forfeitures for the benefit of TSgt Reedy's dependent. (Convening Authority Decision on Action, ROT Vol. 1, 13 July 2022.)

The record of trial consists of 3 prosecution exhibits, 24 defense exhibits, and 6 appellate exhibits. The transcript is 107 pages. TSgt Reedy is not currently confined.

Counsel is currently assigned 20 cases; this case has the highest priority. However, the seven days to respond are largely filled with holidays, and counsel will be on pre-planned leave from 31 August until 4 September. Additionally, counsel will be completing a grant brief in *United States v. Palik*, ACM 40225, which is due 8 September. Counsel requests five days to complete return from leave, consult with TSgt Reedy, and file a reply brief.

Through no fault of TSgt Reedy, undersigned counsel will not be able to fully advise TSgt Reedy in the limited time available. TSgt Reedy was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. An enlargement of time is necessary to allow undersigned counsel to fully review the Answer and advise TSgt Reedy on how to respond.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 30 August 2023.

[redacted]

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Technical Sergeant (TSgt) **CHAD L. REEDY,** United States Air Force *Appellant*	)))))))))	**APPELLANT'S REPLY BRIEF** Before Panel No. 2 No. ACM 40358 8 September 2023

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

Appellant, Technical Sergeant (TSgt) Chad L. Reedy, pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this Reply to the Appellee's Answer, dated 30 August 2023 (Ans.). In addition to the arguments in his opening brief, filed on 14 July 2023 (App. Br.), TSgt Reedy submits the following arguments for the issues listed below.

I.

A PLEA AGREEMENT REQUIRING A DISHONORABLE DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THUS VIOLATES PUBLIC POLICY.

The Government raises three principal arguments in defending the mandatory dishonorable discharge: (1) the provision did not violate TSgt Reedy's right to complete sentencing proceedings; (2) the provision did not violate public policy; and (3) TSgt Reedy suffered no prejudice. (Ans. at 4–9.) This Court should find the provision violates both the right to complete sentencing proceedings and public policy—as these two questions are two sides of the same coin—and should strike the offending provision without performing a prejudice analysis.

The mandatory dishonorable discharge provision violates public policy because it truncates the right to complete presentencing proceedings. The Government's counterargument to this centers on *United States v. Geier*, No. ACM S32679, 2022 LEXIS CCA 468 (A.F. Ct. Crim. App. 2 Aug. 2022) (unpub. op.). (Ans. at 4, 7.) TSgt Reedy understands that if this Court follows *Geier*, he loses. But protecting the integrity of sentencing proceedings should lead this Court to a different conclusion.

At bottom, the issue is whether the convening authority can strip the sentencing authority of discretion to issue a punishment that Congress has not deemed mandatory. This is especially true when the convening authority has already circumscribed the maximum and minimum terms of confinement. Removing discretion on a punitive discharge thus transforms the sentencing proceeding into an "empty ritual." *United States v. Davis*, 50 M.J. 426, 429 (C.A.A.F. 1999) (citing *United States v. Allen*, 25 C.M.R. 8, 11 (C.M.A. 1957)).

The Government's arguments to the contrary are unavailing. First, it focuses on an accused's ability to waive numerous matters under a plea agreement. (Ans. at 4–5.) This is true, but irrelevant. Where an agreement violates public policy, an accused cannot waive "the underlying right or privilege as part of the pretrial agreement." *United States v. Edwards*, 58 M.J. 49, 52 (C.A.A.F. 2003). No amount of judicial scrutiny can validate a provision that is invalid under public policy.

Second, the Government argues that the provision is permissible because it falls within the range of available punishments for the convicted offenses. This is also true, but irrelevant. If this Court were to adopt the Government's logic, a plea

agreement could dictate an exact sentence as long as it fell within the permissible range—the perfect example of an "empty ritual."

Third, the Government invites this Court to test the error for prejudice. (*Id.*) This Court should view this invitation with skepticism. The Government cites no authority for the novel application of a prejudice analysis to the ultimate sentence. And this makes sense, because the Court of Appeals for the Armed Forces (CAAF) has said just the opposite. "To the extent that a term in a pretrial agreement violates public policy, it will be stricken from the pretrial agreement and not enforced." *Edwards*, 58 M.J. at 52 (citing *United States v. Clark*, 53 M.J. 280, 283 (C.A.A.F. 2000); R.C.M. 705(c)(1)(B)). The Rule itself reflects this point: "A term or condition of a plea agreement shall not be enforced if it deprives the accused of . . . the right to complete presentencing proceedings." R.C.M. 705(c)(1)(B).

Even though a prejudice analysis is not warranted under the law, the Government's argument on prejudice is nevertheless flawed. It claims that, even absent the error, the military judge *would* have issued a dishonorable discharge.[1] (Ans. at 8–9.) But not all child pornography cases merit a dishonorable discharge, as this Court recently demonstrated. *See United States v. Nestor*, ACM 40250, 2023 CCA LEXIS 272, at *37 (A.F. Ct. Crim. App. 30 Jun. 2023) (unpub. op.) (reassessing a sentence for possession of child pornography to 16 months' confinement and a bad-conduct discharge).

[1] This begs the question: If a dishonorable discharge were a virtual certainty, as the Government argues here, why was this provision even necessary?

This Court can protect the integrity of the sentencing process by returning discretion on a punitive discharge to the sentencing authority, thus preventing the sentencing process from becoming an "empty ritual."

WHEREFORE, TSgt Reedy requests this Court sever the mandatory dishonorable discharge, uphold the remainder of the plea agreement, and review the sentence using its powers under Article 66, UCMJ.

II.

A PLEA AGREEMENT THAT CONDITIONS DISMISSAL WITH PREJUDICE UPON COMPLETION OF APPELLATE REVIEW IS UNENFORCEABLE.

TSgt Reedy and the Government agree on a key point: upon completion of appellate review, "regardless of whether the findings or sentence [are] upheld," prejudice will attach to the dismissal. (Ans. at 13.) TSgt Reedy requests that, if this Court grants relief on Issue I or III, the decretal language indicate that Specification 1 and Specification 2 are dismissed with prejudice.

In making its argument, the Government demonstrates how this Court may take this path without ruling contrary to *United States v. Goldsmith*, No. ACM 40148, 2023 CCA LEXIS 8, at *11–14 (A.F. Ct. Crim. App. 11 Jan. 2023) (unpub. op.). (Ans. at 12–13.) *Goldsmith* involved additional problematic language: prejudice would ripen "where the findings and sentence have been upheld." *Id.* at *5. This case does not. The proverbial sword of Damocles does not hang above TSgt Reedy's appeal in the same way.

TSgt Reedy raised this error to counter the possibility that his appellate success on other issues would resurrect the specifications where prejudice attaches

upon completion of appellate review. This Honorable Court should concur with both TSgt Reedy and the Government that the outcome of this appeal does not affect dismissal with prejudice.

WHEREFORE, TSgt Reedy respectfully requests this Court refuse to enforce Paragraph 2b of the Plea Agreement and indicate in its decretal paragraph that Specifications 1 and 2 of the Charge are dismissed with prejudice (even if providing relief on the other assignments of error).

III.

THE RECORD OF TRIAL'S OMISSION OF THE COURT-MARTIAL AUDIO IS A SUBSTANTIAL OMISSION WARRANTING RELIEF.

The Government claims that the complete absence of audio is not a substantial omission from the record of trial. (Ans. at 20–21.) But it cites no authority to support its argument. Instead, it attempts to distinguish two cases that found omissions of audio substantial. (*Id.* (citing *United States v. Matthew*, ACM 39796, CCA LEXIS 425, *11-12 (A.F. Ct. Crim App. 21 Jul. 2022) (unpub. op.); *United States v. Mobley*, ACM 40088, 2022 CCA LEXIS 79, *3 (A.F. Ct. Crim. App. 4 Feb. 2022) (unpub. op.)).) These cases cannot undermine the established principle that missing court-martial audio is a substantial omission. (*See* App. Br. at 14.)

WHEREFORE, TSgt Reedy requests this Court approve a bad-conduct discharge instead of a dishonorable discharge.

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 8 September 2023.

[redacted]

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40358**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Chad L. REEDY	)	**PANEL CHANGE**
Technical Sergeant (E-6)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 4th day of January, 2024,

ORDERED:

The record of trial in the above styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review.

The Special Panel in this matter shall be constituted as follows:

RICHARDSON, NATALIE D., Colonel, Senior Appellate Military Judge
DOUGLAS, KRISTINE M., Colonel, Appellate Military Judge
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal