UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40341 (rem)**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Thomas M. SAUL	)	**DOCKETING**
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

The record of trial in the above-styled case was returned to this court by the Military Appellate Records Branch (JAJM).

Accordingly, it is by the court on this 15th day of August, 2025,

ORDERED:

That the Record of Trial in the above styled matter is referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

Counsel may submit briefs **not later than 15 September 2025**.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40341 (rem)**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Thomas M. SAUL	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Special Panel**

In its 21 July 2025 opinion, our superior court remanded the above styled case back to the Judge Advocate General of the Air Force for remand to this court to determine if it wanted to "dismiss Charge I and its specification without prejudice and reassess the sentence based on the affirmed findings" or to "set aside the sentence and order a rehearing on Charge I and its specification and on the sentence." *See United States v. Saul*, __ M.J. __, No. 24-0098, 2025 CAAF LEXIS 578, at *16 (C.A.A.F. 21 Jul. 2025).

On 15 August 2025, the court re-docketed Appellant's case. In light of our superior court's decision *supra*, and in this docketing notice, we permitted counsel to submit briefs not later than 15 September 2025.

On 5 September 2025, Appellant moved this court for a first enlargement of time (EOT) for 30 days, to end on 15 October 2025. On 8 September 2025, the Government opposed the motion.

In a separate filing, on 8 September 2025, the Government moved this court for a first enlargement of time of 7 days, to end on 22 September 2025. In this motion, the Government stated it "does not oppose a 7-day EOT also being granted to Appellant." Appellant did not file an opposition to this motion.

The court has considered Appellant's motion, the Government's opposition, the Government's motion, case law, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 11th day of September, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED.**

Government's Motion for Enlargement of Time (First) is **GRANTED.**

Both briefs for the Government and Appellant are due **not later than 15 October 2025**.

Due to the procedural history of this case, any subsequent motions for an enlargement of time may not be granted absent exceptional circumstances.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) **THOMAS M. SAUL** United States Air Force *Appellant.*	)))))))))	UNITED STATES' MOTION FOR AN ENLARGEMENT OF TIME (FIRST) Before Special Panel No. ACM 40341 (rem) 8 September 2025

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 a 7-day enlargement of time to respond in the above captioned case. This case was docketed with the Court on 15 August 2025. Our superior Court remanded this case back to this Court:

> The finding that Appellant is guilty of Charge I and its specification is set aside. The other findings are affirmed. The record is returned to the Judge Advocate General of the Air Force for remand to the Court of Criminal Appeals. That court either may dismiss Charge I and its specification without prejudice and reassess the sentence based on the affirmed findings, or it may set aside the sentence and order a rehearing on Charge I and its specification and on the sentence.

United States v. Saul, __ M.J. __ (C.A.A.F. 21 July 2025). As a result, this "case was returned to this Court by the Military Appellate Records Branch (JAJM)." (*Notice of Docketing*, 15 August 2025.) This Court's notice of docketing indicated that "Counsel may submit briefs not later than 15 September 2025."

This is the United States' first request for an enlargement of time. As of the date of this request, 24 days have elapsed since docketing. The United States' brief is currently due 15

September 2025. If the enlargement of time is granted the United States' response will be due 22 September 2025, and 38 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. Since the docketing date, undersigned counsel filed an answer brief due to this Court on 18 August 2025 for United States v. Campbell, No. ACM 40652. She also planned and attended mandatory JAJG's Newcomer's Training on 26-28 August 2025. On 8 September 2025, undersigned counsel filed a 55-page answer brief for United States v. Matti, USCA Dkt. No. 25-0148/AF, at the United States Court of Appeals for the Armed Forces. Also on this date, undersigned counsel filed a motion for reconsideration for United States v. Sanger, No. ACM S32773. As a result, undersigned counsel has not been able to begin working on preparing a brief for United States v. Saul. Now, this case is undersigned counsel's first priority. Due to office workload, there is no other appellate government counsel to work on the brief sooner. Further, undersigned counsel is already familiar with the record and therefore is best suited to provide a brief on whether this court should dismiss Charge I and its specification without prejudice and reassess the sentence, or order a rehearing as to Charge I and its specification. The United States does not oppose a 7-day EOT also being granted to Appellant.

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

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MARY ELLEN PAYNE
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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 Appellate Defense Division on 8 September 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Special Panel
Staff Sergeant (E-5) **THOMAS M. SAUL** United States Air Force *Appellant*	)	No. ACM 40341 (rem) 5 September 2025

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to submit a brief. Appellant requests an enlargement for a period of 30 days, which will end on **15 October 2025**. The record of trial was returned to and docketed with this Court on 15 August 2025. In its Notice of Docketing, this Court set a deadline of 15 September 2025 for undersigned counsel to submit a brief on behalf of Appellant. From the date of docketing to the present date, 21 days have elapsed. On the date requested, 61 days will have elapsed.

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

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 September 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) **THOMAS M. SAUL**, United States Air Force, *Appellant.*	)	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Special Panel No. ACM 40341 (rem) 8 September 2025

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.

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Appellate Government Counsel
Government Trial & Appellate Operations
1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4804

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 September 2025.

KATE E. LEE, Maj, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' BRIEF IN SUPPORT OF SENTENCE REASSESSMENT
v.	)	
	)	Before Special Panel
Staff Sergeant (E-5) **THOMAS M. SAUL,** United States Air Force, *Appellant.*	)	No. ACM 40341 (rem) 14 October 2025

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

ISSUE PRESENTED

WHETHER THIS COURT SHOULD REASSESS APPELLANT'S SENTENCE OR ORDER A REHEARING ON THE SENTENCE.

STATEMENT OF CASE

Contrary to Appellant's pleas, a military judge, sitting alone, found Appellant guilty of wrongful use of a controlled substance on divers occasions in violation of Article 112a, UCMJ (Charge II). (*Entry of Judgment*, 15 June 2022, ROT, Vol. 1.) Appellant pleaded guilty to willfully destroying non-military property in violation of Article 109, UCMJ (Charge I), and disrespecting a superior commissioned officer in violation of Article 90, UCMJ (Additional Charge I). (Id.) The military judge adjudicated the following segmented sentence to confinement: two months for destruction of non-military property; three months for drug use; and four months for willfully disobeying a superior commissioned officer. (Id.) Appellant's segmented sentence to confinement was served consecutively for a total of nine months. (Id.) The convening authority took no action on the findings and approved the sentence as adjudged. (*Convening Authority Decision on Action Memorandum*, 25 May 2022, ROT, Vol. 1).

On appeal, this Court affirmed the findings and sentence. United States v. Saul, No. ACM 40341, 2023 CCA LEXIS 546, at *2 (A.F. Ct. Crim. App. 29 December 2023) (unpub. op). Then Appellant appealed this Court's decision to the Court of Appeals for the Armed Forces (CAAF). CAAF granted on "[w]hether a guilty plea for willful destruction of property under Article 109, UCMJ, can be provident when Appellant thrice told the military judge that 'he did not intend to damage the [property]' and that he was surprised there was actual damage (Issue I)."[1] United States v. Saul, 84 M.J. 472 (C.A.A.F. 2024) (order granting review). CAAF held that the military judge abused his discretion in accepting Appellant's plea of guilty to destruction of non-military property. United States v. Saul, 2025 CAAF LEXIS 578, at *16 (C.A.A.F. 21 July 2025).

CAAF set aside the finding as to Charge I. Id. CAAF affirmed the lower court as to all other findings of guilty. Id. CAAF ordered the following: "The record is returned to the Judge Advocate General of the Air Force for remand to the Court of Criminal Appeals. The court may dismiss Charge I and its specification without prejudice and reassess the sentence based on the affirmed findings, or it may set aside the sentence and order a rehearing on Charge I and its specification on the sentence." Id. This Court then asked the parties to file briefs no later than 15 October 2025. (*Order*, 11 September 2025).

[1] CAAF also granted on two other issues related to Appellant's firearm prohibition annotation notated in Appellant's entry of judgment. CAAF did not order briefing on these issues. CAAF found these issues were moot because it lacked authority to provide Appellant with relief. Saul, 2025 CAAF LEXIS, at *15.

STATEMENT OF FACTS

Wrongful Use of Trenbolone

Appellant was charged and convicted of one specification wrongfully using "Trenbolone" on divers occasion under Article 112a, UCMJ. (*Entry of Judgment,* ROT, Vol. 1 at 2.) Trenbolone is a controlled substance and classified as a steroid.

Appellant's leadership found Trenbolone at his off base residence. Due to a domestic dispute with his spouse, Maj BW, Appellant's commander, directed the First Sergenat, MSgt MC, to move Appellant to unaccompanied base housing. (R. at 732.) Maj BW wanted to ensure that Appellant had personal items, such as medications. (R. at 732-33.) So Maj BW and MSgt MC went to Appellant's off-base residence to retrieve medication and other personal items. (R. at 733.) Maj BW and MSgt MC noticed that there was one bottle of what appeared to be medication with markings "not for human consumption." (R. at 736; Pros. Ex. 5.) Maj BW gave the bottle to the Air Force Office of Special Investigations (OSI). (R. at 737.) This bottle contained Trenbolone – a steroid.

The government's forensic toxicologist explained that Trenbolone was an anabolic-androgenic steroid that was not approved for use in humans. (R. at 1003-04.) Trenbolone "was designed and actually is now used in the US as a veterinary steroid…for cattle…it gets [cattle] to market faster, gets more beef on them faster." (R. at 1004.) The forensic toxicologist explained that humans use Trenbolone to facilitate them to continue exercising with less recovery time. (R. at 1008.)

Witness testimony also revealed that Appellant was a member of a weightlifting gym and was considered a "powerlifter." (R. at 794-795.) Appellant would compete in and win weightlifting and powerlifting competitions. (R. at 809) Appellant could squat between 700 to

800 pounds and bench press approximately 400-500 pounds. (R. at 635.) Members of Appellant's gym community knew Appellant used steroids and who gave steroids to others. (R. at 796.)

AM, a civilian who Appellant had an extramarital relationship with, told OSI that Appellant used steroids – the substance trenbolone. (R. at 743, 746.) This testimony was corroborated by the text messages, exchanged between Appellant and AM, where Appellant admitted to "running a longer cycle of tren [Trenbolone] . . . ." The expert testified that a cycle of steroids usually takes place over the course of six weeks with a two week period of no steroid usage to allow the body to recover. (R. at 1011.)

Wilfully Disobeying Superior Commissioned Officer

Appellant pleaded guilty to Article 90, UCMJ, willfully disobeying a superior commissioned officer (Additional Charge I):

> Having received a lawful command from Maj [BW], his superior commissioned officer, then known by [Appellant] to be his superior commissioned officer, to not have any contact with [AM][2], or words to the effect, did, at or near Tinker, Air Force Base, Oklahoma, on or about 20 February 2021, willfully disobey the same.

(*Entry of Judgment*, 15 June 2022; R. at 581.)

Appellant in his own words described why he was guilty of disobeying his superior commissioned officer. Appellant described that his commander, Maj BW, issued a no-contact order, which prohibited Appellant from having any contact with AM. (R. at 582-83.) Appellant understood that he received a lawful order from a superior commissioned officer. (R. at 583.) The no-contact order was dated 26 January 2021. (AE XLVI.) On 20 February 2021, while the

[2] OSI interviewed AM in September 2020 about Appellant's steroid uses, and consequently AM was a witness in Appellant's court-martial. (R. at 743.)

no-contact order was still in effect, Appellant was upset with his wife and as a result hit the windshield of his wife's rental car, damaging the windshield. (R. at 582.) Appellant's wife told Appellant that she would call the police. (Id.) Appellant, angry at his wife, decided to call AM, who he previously had an extramarital relationship with. (Id.) Appellant Facetimed AM and turned his iPhone around so that his wife could see AM. (Id.) Appellant knew that when he called AM, it was violation of the no contact order. (R. at 583.)

Destruction of Non-Military Property

Appellant pleaded guilty to destruction of non-military property – destroying a windshield – and admitted the following facts in the plea inquiry. On the morning of 19 February 2021, Appellant had an argument with his wife at his off-base residence. (R. at 551-52.) Appellant wanted his wife to take the children and leave, so he went to start his wife's rental car to turn on the heat hoping that his wife and children would soon leave. (R at 571.) Appellant's wife responded that she was not going anywhere and that if he made her leave, she was going to call the police. (R. at 552.) Appellant then struck the windshield and started walking towards her. (Id.) Appellant stated that although he intended to hit the windshield, he did not intend to damage the windshield. (R. at 553.) Appellant intended to hit the windshield and while his specific goal was not to completely demolish, annihilate, or damage the window, his intent was to hit the windshield with a "large amount of force." (R. at 573.) Appellant also stated that he was surprised that there was actual damage. (R. at 573.) Appellant did however admit in the providence inquiry that the damage windshield was a natural consequence of him striking the windshield. (R. at 601). This offense was set aside by CAAF.

Pre-sentencing proceedings

The government admitted Appellant's personal data sheet, enlisted performance reports, and a letter of reprimand. (Pros. Exs. 13-15.) Appellant received a letter of reprimand for failing "to properly process all Defense Travel System requirements and documents to process payments" for witnesses who traveled in support of a court-martial. (Pros. Ex. 15.) The government also called AS, Appellant's wife, to testify but her testimony related to the offense in which our superior Court set aside – destructing non-military property. (R. at 1168.)

The defense called three character witnesses who previously worked with Appellant at the base legal office at Tinker Air Force Base and described that based on Appellant's work ethic as a paralegal and enlisted member of the Air Force he had rehabilitative potential. (R. at 1188, 1196-97, 1200-01, 1214.) Overall, the character witnesses thought that Appellant had the "ability and drive to move forward." (R. at 1214.)

Appellant's father, MS, also testified. He explained that his son had been through a hard time with depression for a few years, but over time Appellant seemed to be happier. (R. at 1227-28.) MS explained that Appellant had a support system to help him through process of facing a court-martial and that Appellant would "bounce[] back." (Id.)

Appellant made an unsworn statement. (R. at 1230.) He generally spoke about tough moments throughout his life and that he is now able to take care of his mental and physical health. (R. at 1234.) Appellant understood that he needed to be punished for his actions. (Id.)

ARGUMENT

THIS COURT SHOULD DISMISS CHARGE I AND ITS SPECIFICATION WITHOUT PREJUDICE AND REASSESS THE SENTENCE IN THIS CASE WITHOUT REMANDING FOR A REHEARING.

Standard of Review

If a CCA "cannot reliably determine what sentence would have been imposed at the trial level if the error had not occurred[,]" then a sentencing rehearing is appropriate. United States v. Sales, 22 M.J. 305, 307 (C.M.A. 1986). If a CCA is "convinced that even if no error had occurred at trial, the accused's sentence would have been at least of a certain magnitude[,]" then the Court may reassess the sentence. Id.

Law and Analysis

This Court should reassess Appellant's sentence to a bad-conduct discharge, confinement for a total of seven months, forfeiture of pay of $1,000 per month for seven months, and reduction to E-2, and a reprimand. A rehearing is not warranted in this case. Given Appellant's segmented sentences to confinement, this Court can confidently reassess Appellant's total confinement from nine months to seven months – subtracting the two months of confinement associated with the set aside conviction. The issue then becomes whether Appellant's set aside conviction impacted his unitary sentence. It did not because the gravamen of Appellant's offenses remain intact.

This Court is vested with the statutory authority to conduct a sentencing reassessment and should do so in this case. Article 66(d)(1)(A), UCMJ. In United States v. Winckelmann, CAAF listed "illustrative, but not dispositive, points for analysis" for when a CCA considers conducting a sentence reassessment or ordering a rehearing. 73 M.J. 11, 16 (C.A.A.F. 2013). The four factors this Court considers are: (1) "[d]ramatic changes in the penalty landscape and exposure;"

(2) "[w]hether an appellant chose sentencing by members or a military judge alone;" (3) "[w]hether the nature of the remaining offenses capture the gravamen of criminal conduct included within the original offenses;" and (4) "[w]hether the remaining offenses are of the type that judges of the courts of criminal appeals should have the experience and familiarity with to reliably determine what sentence would have been imposed at trial." Id. The Winckelmann factors support sentencing reassessment because the penalty landscape and exposure have not dramatically changed; the findings of guilt capture the gravamen of Appellant's criminal conduct; Appellant chose judge alone sentencing; and this Court has experience assessing sentences for drug use and disobeying a superior commissioned officer.

1. There was no dramatic change in the penalty landscape and exposure.

There was no dramatic change in the penalty landscape and punitive exposure especially in light of Appellant's unitary sentence. The offenses for which Appellant remains guilty of authorize a punishment of seven months confinement, forfeiture of pay of $1,000 per month for nine months, reduction to the grade of E-2, a bad-conduct discharge, and a reprimand – Appellant's sentence adjudged at his court-martial minus the segmented sentence to two months confinement for destruction of non-military property. The following chart highlights that the set aside conviction had no bearing on Appellant's unitary sentence:

Offense	**Maximum Punishment**	**Adjudicated Punishment**
Destruction of non-military property less than 1,000, Article 109 (set aside – Charge I)	-12 Months Confinement -Total Forfeitures -Bad-conduct Discharge	-2 Months Confinement - Forfeiture of pay of $1,000 per month for nine months -Reduction to Grade E-2 -Bad-conduct Discharge
Steroid Use, Article 112a (Charge II)	-5 Years Confinement -Total Forfeitures -Dishonorable Discharge	-3 Months Confinement - Forfeiture of pay of $1,000 per month for nine months -Reduction to Grade E-2 -Bad-conduct Discharge

Willfully disobeying superior commissioned officer, Article 90 (Additional Charge I)	-5 Years Confinement -Total Forfeitures -Dishonorable Discharge	-4 Months Confinement - Forfeiture of pay of $1,000 per month for nine months -Reduction to Grade E-2 -Bad-conduct Discharge

MCM, pt. IV para. 16.d.(2); para 50.d.(1)(a) ; para. 45.d.(3)(a); para. 50.d.(1)(b). A court-martial may sentence an enlisted member to be reduced to the lowest pay grade. R.C.M. 1003(a)(4). Reduction in grade to E-1 is not part of the sentence per Article 58a, UCMJ, but an administrative result of confinement, a punitive discharge, or hard labor without confinement. Article 58a, UCMJ; R.C.M. 1003(a)(4), Discussion. The sentencing authority may adjudge a reprimand. R.C.M. 1003(a)(1). But the convening authority will issue the reprimand in writing. R.C.M. 1003(a)(1), Discussion.

This Court can confidently determine that Appellant's sentence would have been a certain magnitude because Appellant's remaining offenses, more severe crimes than destructing non-military property, authorized a dishonorable discharge, total forfeitures, reduction in rank, and a reprimand.

In many cases in which a CCA is determining between a sentence reassessment versus a sentencing rehearing one or more offenses have been set aside making this Winckelmann factor more influential. But as mentioned above, although there was a set aside conviction here, there was no change in the penalty exposure regarding Appellant's unitary sentence. In fact drug use and disobeying a superior commissioned officer allowed more severe punishments than destruction of non-military property, such as a dishonorable discharge rather than a bad-conduct discharge. This Court can be confident that Appellant's unitary sentence would be of a certain magnitude, such as a bad-conduct discharge, forfeitures, reduction to the grade of E-2, and a

reprimand which this Court affirmed in its initial review of Appellant's case. Saul, unpub. op. at 11-12. The set aside conviction did not drastically change the penalty landscape and punitive exposure. This factor alone favors reassessment.

2. Appellant chose military judge alone sentencing, and this decision tips the scales towards reassessment in this case because military judges are more predictable than members.

Appellant selected to be sentenced by a military judge alone, giving this Court more insight into what the sentence would have been at the trial level but for the set aside conviction. (R. at 542). "As a matter of logic, judges of the courts of criminal appeals are more likely to be certain of what a military judge would have done as opposed to members." Winckelmann, 73 M.J. at 16. In this case, this Court can view the evidence through the lens of a military judge where Appellant was not convicted of destruction of non-military property. This factor favors reassessment.

3. The nature of the remaining offenses capture the gravamen of criminal conduct included within the original offenses.

Turning to the gravamen factor, Appellant remains guilty of the most serious offenses originally charged with. Appellant on divers occasions used Trenbolone, a steroid not approved for human consumption. Appellant also disobeyed a superior commissioned officer's no-contact order by contacting AM who was a witness in the investigation related to Appellant's steroid use. This Court can be confident that Appellant's unitary sentence reflected the seriousness of these offenses. Appellant disregarded the safety and well-being of his health and physical fitness when he deliberately consumed a steroid used in cattle. (R. at 1004.) Appellant admitted that he was aware of the no-contact order prohibiting communications with AM, but still contacted AM, a person whom he had an extramarital affair with, to further upset his wife. (R. at 582.)

Appellant's set aside conviction, destructing a windshield pale in comparison to the convictions that our superior Court affirmed on appeal.

The destruction of non-military property did not tip the scales in favor of a bad-conduct discharge. Appellant's plea to the destruction of the rental car windshield mitigated his culpability and therefore the military judge would have thought that this was a minor crime. As a result, the military judge issued a punitive discharge on the basis of Appellant's remaining offenses. Also of note, the military judge sentenced Appellant to two months confinement for destruction of the windshield. This segmented sentence was the least amount of confinement adjudged compared to Appellant's other offenses because this was his most minor offense. Thus, there is no doubt that Appellant's unitary sentence would have been a certain magnitude that would have included a punitive separation in light of Appellant's remaining offenses. This factor favors reassessment.

4. This Court has the experience and familiarity with drug use and disobeying a superior commissioned officer to reliably determine what sentence would have been imposed at trial.

Lastly, this Court can "determine to its satisfaction that, absent any error, the sentence adjudged would have been of at least a certain severity." Sales, 22 M.J. at 308. This court assesses the appropriateness of sentences as part of its statutory directive under Article 66(d)(1)(A), UCMJ. And this Court can easily determine an appropriate sentence after reviewing the admitted evidence at findings and sentencing evidence.

This Court can be confident that the two remaining convictions were the basis for Appellant's unitary sentence adjudicated at trial. Not only were Appellant's remaining offenses more severe, but also Appellant never intended to damage the windshield – even though he admitted that damage was a natural and probable consequence of hitting the windshield. Such a

minor offense would not have influenced the military judge to adjudicate a punitive discharge. This Court should find that Appellant could have received a bad-conduct discharge for any of the two offenses on their own because facts supporting each offense would have warranted a bad-conduct discharge. Appellant deserves a bad-conduct discharge for his drug use. Appellant's use was not an experimental or accidental use of drugs, but a systematic steroid use to reap the benefits that Trenbolone had on athletic recovery. (R. at 1008.) AM and members of Appellant's gym knew Appellant as someone who used steroids and as someone who they could get steroids from. (R. at 743, 746, 796.) Further, Appellant's commander directed Appellant to refrain from contacting AM, a person whom he had an extramarital affair with, through a no contact order, and Appellant deliberately and intentionally violated that order, during a domestic dispute, when he FaceTime AM to show his wife to further upset his wife.

A bad-conduct discharge "is designed as a punishment for bad-conduct." R.C.M. 1003(b)(8)(C). Appellant's drug use followed by his violation of a no-contact order and thereby disobeying a superior commissioned officer warranted a bad-conduct discharge. Appellant's set aside conviction for destruction of non-military property – where Appellant told the military judge in his plea inquiry that he did not intend to damage the windshield and that he was surprised that there was damage – did not tip the scales in favor of a punitive discharge or other portions of his unitary sentence. This Court can reliably determine what sentence would have been imposed at trial. Thus, this Winckelmann factor weighs in favor of sentencing reassessment rather than a rehearing.

CONCLUSION

This Court has the requisite tools – the entire record of trial of Appellant's litigated court-martial – to reliably determine what sentence would have been imposed at trial but for the set aside conviction. Sales, 22 M.J. at 307. Based on the totality of the circumstances in this record, this Court should be convinced that a rehearing on the sentence is "unnecessary and that a reassessment of sentence will suffice." Id. at 308. This Court should reassess Appellant's sentence to seven months confinement, forfeiture of pay of $1,000 per month for nine months, reduction to the grade of E-2, a bad-conduct discharge. For these reasons, the United States respectfully requests that this Honorable Court reassess Appellant's sentence without remanding for a hearing.

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FOR

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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 October 2025.

VANESSA BAIROS, Maj, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Special Panel
Staff Sergeant (E-5) **THOMAS M. SAUL,** United States Air Force, *Appellant.*	)	No. ACM 40341 (rem)
	)	14 October 2025

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

Issue of Remand

Whether this court should dismiss Charge I and its specification without prejudice and reassess Staff Sergeant Saul's sentence based on the affirmed findings or set aside the sentence and order a rehearing on Charge I and its specification and on the sentence.

Statement of the Case

On 15 April 2022, a military judge sitting as a general court-martial, at Tinker Air Force Base, OK, convicted Staff Sergeant (SSgt) Thomas M. Saul, consistent with his pleas, of one specification of willfully disobeying a superior commissioned officer in violation of Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one specification of willfully and wrongfully destroying nonmilitary property in violation of Article 109, UCMJ, 10 U.S.C. § 909. R. at 1162; Entry of Judgment (EOJ). The military judge also found SSgt Saul guilty, contrary to his pleas, of one specification of wrongful use of a controlled substance, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. *Id.*

The military judge sentenced SSgt Saul to a reprimand, a reduction to the grade of E-2, forfeiture of $1,000 of pay per month for nine months, nine months of confinement, and a bad-

conduct discharge. R. at 1265. The convening authority took no action on the findings or sentence and denied SSgt Saul's request for waiver of all automatic forfeitures. Convening Authority Decision on Action, dated 25 May 2022.

This Court affirmed the findings and sentence. *United States v. Saul*, No. ACM 40341, 2023 CCA LEXIS 546, at *3 (A.F. Ct. Crim. App. Dec. 29, 2023) (unpublished). On 21 July 2025, the United States Court of Appeals for the Armed Forces (CAAF) set aside this Court's decision as to the charge and specification in violation of Article 109, UCMJ, and affirmed as to the other charges and specifications. *United States v. Saul*, No. 24-0098, 2025 CAAF LEXIS 578, at *11 (C.A.A.F. Jul. 21, 2025). The CAAF ordered that SSgt Saul's case be "returned to the Judge Advocate General of the Air Force for remand to [this Court]" and that this Court "may dismiss Charge I and its specification without prejudice and reassess the sentence based on the affirmed findings, or it may set aside the sentence and order a rehearing on Charge I and its specification and on the sentence." *Id.* at 12.

Statement of Facts

A. SSgt Saul's guilty plea for willful destruction of property was not provident.

The military judge abused his discretion in accepting SSgt Saul's guilty plea to willfully and wrongfully destroying a windshield in violation of Article 109, UCMJ. *Saul*, 2025 CAAF LEXIS 578, at *10. In its decision, CAAF explained, "[A]lthough the military judge and counsel for both sides conscientiously endeavored to find a way to have Appellant establish that he acted with the requisite intent, the military judge could not accept the guilty plea with the substantial inconsistency unresolved." *Id.* at *9.

SSgt Saul initially pleaded guilty to willfully and wrongfully destroying a windshield, of a value of under $1,000. Charge Sheet; R. at 544. But during his providence inquiry,

SSgt Saul explained that he "did not intend to damage the vehicle." R. at 552. This set up a matter inconsistent with the guilty plea because Charge I and its specification required specific intent. After multiple discussions and attempts to resolve the inconsistency, the Court accepted SSgt Saul's guilty plea without overcoming SSgt Saul's express statement that he did not intend to damage the windshield. R. at 602, 608.

B. SSgt Saul pleaded guilty to willful destruction of property without the benefit of a plea agreement.

SSgt Saul pleaded guilty without the benefit of any agreement or promises from the Government. R. at 594. During his providence inquiry, SSgt Saul apologized to his wife and his leadership for the underlying incident. R. at 553. During his unsworn statement, SSgt Saul, again, thanked his Air Force unit for their support, and apologized to his wife and children for his actions. R. at 1234.

C. The military judge relied on evidence in aggravation to SSgt Saul's improvident guilty plea when deciding a sentence.

During presentencing, the military judge agreed to consider SSgt Saul's providence inquiry in deciding a sentence. R. at 1168. In its sentencing case, the Government called SSgt A.S. to testify. *Id.* The only evidence elicited during the direct examination of SSgt A.S. related to Charge I and its Specification. R. at 1168-73. The Government presented no additional witnesses during sentencing.

In the Defense's sentencing case, the Defense called four witnesses. R. at 1182, 1194, 1209, 1222. Trial counsel cross-examined three of the four Defense witnesses. R. at 1189, 1206, 1215, 1228. During the cross-examination of the three Defenses witnesses, trial counsel questioned each witness regarding the offense of willfully destroying the windshield. R. at 1189, 1206, 1215.

During the Government's sentencing argument, trial counsel asked the Court to sentence SSgt Saul to, *inter alia*, a bad-conduct discharge, total forfeitures for the duration of confinement, reduction to the grade of E-1, a reprimand, and four months' confinement for Charge I and its specification. R. at 1248. While arguing for a bad-conduct discharge, trial counsel stated, "Individually, these crimes may not come out to a BCD, but when looked at together . . . it becomes apparent that a BCD is appropriate." R. at 1249-50.

D. Adjudged sentence.

The military judge's sentence included both unitary and segmented components. R. at 1265. The unitary components included a reprimand, a reduction to the grade of E-2, forfeiture of $1,000 pay per month for nine months, and a bad-conduct discharge. *Id.* The segmented components included a period of confinement for each offense, including two months' confinement for the now set aside finding of guilt. *Id.* The military judge adjudged all sentences to run concurrently. *Id.*; Charge Sheet.

Argument

This court should dismiss Charge I and its specification, reassess the sentence, and set aside SSgt Saul's punitive discharge as it is the only meaningful relief this court can provide after the Court of Appeals for the Armed Forces set aside the finding of guilty on Charge I.

A. Dismissal of Charge I and its specification is appropriate in this case.

This Court should dismiss Charge I and its specification in the interest of judicial economy. Pursuant to the CAAF's 21 July 2025 mandate and this Court's statutory authority, this Court has the option to either return this case for a rehearing or dismiss the specification and reassess the sentence. *See* Article 66(f)(1), UCMJ, 10 U.S.C. § 866(f)(1). Dismissal is the appropriate remedy where "an accused would be prejudiced or no useful purpose would be

served by continuing the proceedings." *United States v. Gore*, 60 M.J. 178, 187 (C.A.A.F. 2004). Here, no useful purpose would be served by ordering a rehearing.

When a guilty plea is deemed improvident as to one of multiple specifications, it is appropriate to dismiss the affected specification instead of remanding the case, in the interest of judicial economy. *United States v. Ingram*, No. ACM S32781, 2025 CCA LEXIS 354, at *8-9 (A.F. Ct. Crim. App. July 31, 2025) (*citing Saul*, 2025 CAAF LEXIS 578, at *16). In *Ingram*, this Court found the appellant's guilty plea to allegations of wrongful use of cocaine and dereliction of duty to be provident and an allegation of wrongful possession of cocaine to be improvident. *Id.* This court then dismissed the specification at issue and reassessed the sentence, rather than ordering a rehearing, in the interest of judicial economy and in response to the expressed preference of the parties. *Id.* at *13. The interests of judicial economy similarly apply to the present case for three reasons.

First, like *Ingram*, SSgt Saul was convicted of multiple offenses that are unaffected by Charge I and its specification being set aside. *Ingram*, 2025 CCA LEXIS 354, at *1-2; R. at 1162; EOJ. Because of the segmented sentencing in this case, the sentence reassessment for the remaining charges after dismissal of Charge I and its specification will be significantly simplified. *United States v. Smith*, 85 M.J. 283, 291, n.5 (C.A.A.F. 2024).

Second, SSgt Saul will not receive a "windfall" by dismissal without prejudice because Charge I and its specification will be returned to the convening authority for further disposition. *See United States v. Kibler*, 84 M.J. 603, 608-09 (A. Ct. Crim. App. 2024) (en banc).

Third, unlike *Ingram* and *Kibler*, SSgt Saul pleaded guilty to Charge I and its specification without the benefit of a plea agreement. R. at 594. This makes the basis for dismissal here stronger than *Ingram* or *Kibler* because there is no infringement on basic

contractual principles or a concern that SSgt Saul would be unjustly enriched by a dismissal without prejudice.

B. This Court can reliably reassess the sentence based on the affirmed findings.

Reassessment in lieu of a rehearing is warranted when shown by the factors set out in *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013). Those factors are: (1) whether there have been "dramatic changes in the penalty landscape and exposure"; (2) whether the "appellant chose sentencing by members or a military judge alone"; (3) whether "the nature of the remaining offenses capture the gravamen of criminal conduct included within the original offenses and, in related manner, whether significant or aggravating circumstances addressed at the court-martial remain admissible and relevant to the remaining offenses"; and (4) whether "the remaining offenses are of the type that judges of the courts of criminal appeals should have the experience and familiarity with to reliably determine what sentence would have been imposed at trial." *Id.*

Here, this Court is equipped to accurately reassess SSgt Saul's sentence as the first, second, and fourth *Winckelmann* factors weigh in favor of reassessment. *Winckelmann*, 73 M.J. at 15-16.

1. There was no dramatic change in the penalty landscape and exposure.

SSgt Saul initially faced a maximum confinement of eleven years; he now faces a maximum confinement of ten years. Charge Sheet; Pt. IV, paras. 16d(2); 45d(3)(a); 50d(1)(a), *Manual for Courts-Martial*, *United States* (2019 ed.). The maximum sentence components aside from confinement are unchanged. Accordingly, the penalty landscape and exposure have not dramatically changed. *See e.g. United States v. Casillas*, No. ACM 40551, 2025 CCA LEXIS 445, at *73 (A.F. Ct. Crim. App. July 31, 2025) (finding a reduction from 20 years to 10 years of

maximum confinement is not a dramatic change to the penalty landscape and exposure). This factor favors reassessment. *Id.*

2. SSgt Saul was sentenced by a military judge alone.

SSgt Saul was sentenced by a military judge alone rather than members. "As a matter of logic, judges of the courts of criminal appeals are more likely to be certain of what a military judge would have done as opposed to members." *Winckelmann*, 73 M.J. at 16. In this case, this Court can view the evidence through the lens of a military judge where Appellant was not convicted of destruction of non-military property. This factor favors reassessment.

3. The remaining offenses do not capture the gravamen of criminal conduct.

The third factor weighs against reassessment because the bulk of the Government's sentencing case is no longer admissible or relevant to the remaining offenses. R. at 1168-73, 1189, 1206, 1215. But this Court can still reliably reassess SSgt Saul's sentence because the Winckelmann factors are illustrative, not dispositive. *Winckelmann*, 73 M.J. at 15. This Court can still consider the totality of the circumstances and reliably reassess SSgt Saul's sentence. *Id.* Further, the Court may appropriately remedy the changes in sentencing evidence by setting aside the adjudged punitive discharge.

4. The remaining offenses are of the type this Court has the experience with to reliably determine what sentence would have been imposed at trial.

In *Ingram*, this Court said it is familiar with the offenses of wrongful possession of a controlled substance, wrongful use of a controlled substance, and dereliction of duty. *Ingram*, 2025 CCA LEXIS 354, at *14 n.7. Similar to *Ingram*, the remaining offenses in this case are wrongful use of a controlled substance and willfully disobeying a superior commissioned officer. These offenses are not novel and are of a type the judges of this Court have experience and familiarity with. This factor favors reassessment.

C. This Court should set aside SSgt Saul's punitive discharge.

SSgt Saul was initially sentenced to consecutively serve in confinement for nine months. Of those nine months, two months were adjudged for Charge I and its specification. EOJ. SSgt Saul served all nine months of his confinement before the CAAF set aside the finding of guilty for Charge I and its specification. There is no ability for this Court, or any authority, to undue this deprivation of liberty. However, this Court may provide appropriate and meaningful relief by setting aside SSgt Saul's bad-conduct discharge. "[I]n comparing two different species of punishment, it is not always apparent which is the more or the less 'severe.' We have, however, generally acknowledged that a punitive discharge may lawfully be commuted to some period of confinement." *Waller v. Swift*, 30 M.J. 139, 143 (C.M.A. 1990) (quoting *United States v. Hodges*, 22 M.J. 260, 262 (C.M.A. 1986)) (additional citation omitted). "[A] determination of the relative severity of a sentence requires more than superficial consideration." *Id.* at 144 (citing *United States v. Hannan*, 17 M.J. 115 (C.M.A. 1984)).

Here, setting aside SSgt Saul's bad-conduct discharge is not only appropriate given the additional two months' confinement he would not have otherwise served, but also due to the facts and circumstances of SSgt Saul's sentencing case. SSgt Saul pleaded guilty without the benefit of a plea agreement or any other promise by the Government. R. at 594. His sentence is not bound by any minimum plea agreement term or mandatory minimum sentence. *Cf. Ingram*, 2025 CCA LEXIS 354 at *14-15 (appellant's improvident plea had no impact on his sentence to confinement because the total confinement was established by the plea agreement for each of the provident specifications). The military judge relied on SSgt Saul's providence inquiry to adjudge the bad-conduct discharge. R. at 1168. The only Government sentencing witness and matters in aggravation introduced by trial counsel related to Charge I and its specification. The record does

not support that a bad-conduct discharge would have been adjudged if SSgt Saul had not been convicted of Charge I and its specification. *See e.g. United States v. Peoples*, 29 M.J. 426, 429 (C.M.A. 1990) (Reversing this Court's decision to affirm appellant's bad-conduct discharge because it could not accurately determine that a bad conduct-discharge would have been adjudged at trial if appellant was only convicted of the remaining offenses).

As trial counsel acknowledged, the adjudged bad-conduct discharge was not warranted for the individual offenses, but it was the compilation of all three offenses that led to the request for a bad-conduct discharge. R. at 1249-1250. With the CAAF setting aside the finding of guilty for Charge I and its specification, the tripod on which SSgt Saul's bad-conduct discharge was supported no longer stands.

SSgt Saul respectfully requests that this Honorable Court reassess his sentence and set aside the adjudged bad-conduct discharge.

Respectfully submitted,

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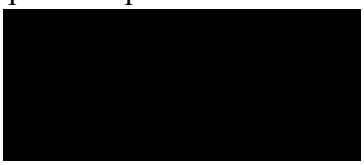
CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 14 October 2025.



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