

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

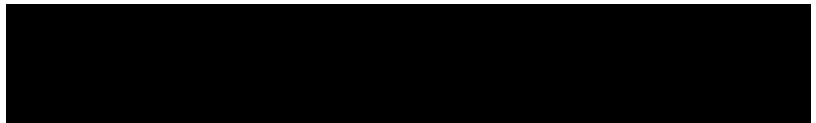
UNITED STATES	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIRST)
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force	)	29 October 2024
<i>Appellant.</i>)	

**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 her first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **7 January 2025**. This case was docketed with this Court on 9 September 2024. From the date of docketing to the present date, 50 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

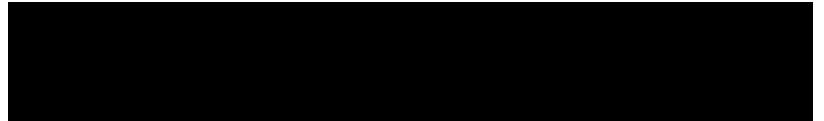


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 29 October 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

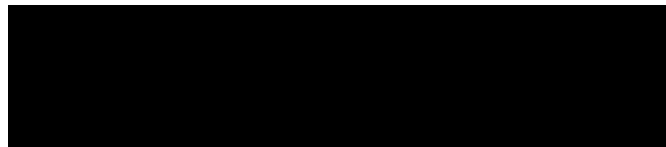
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	AMENDED MOTION FOR
v.	)	ENLARGEMENT OF TIME
)	
Captain (O-3)	)	ACM 40670
SHELLENE C. SAWYER, USAF)	
)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

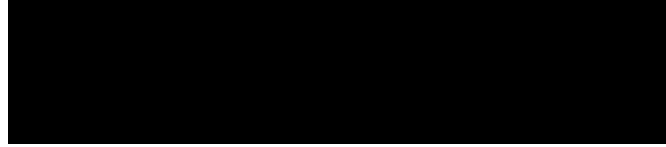
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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 31 October 2024.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

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

UNITED STATES	)	No. ACM 40670
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Shellene C. SAWYER)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 29 October 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant’s assignments of error. The Government opposed 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 4th day of November, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **7 January 2025**.

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



FOR THE COURT



OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME (SECOND)
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force	)	27 December 2024
<i>Appellant.</i>)	

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 her second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **6 February 2025**. This case was docketed with this Court on 9 September 2024. From the date of docketing to the present date, 109 days have elapsed. On the date requested, 150 days will have elapsed.

On 2 and 28 May 2024, R. at 1, 165, Appellant was tried by a general court-martial comprised of a military judge sitting alone. R. at 170. Consistent with her pleas, R. at 171-72, Appellant was found guilty of one charge and specification of willfully disobeying a superior commissioned officer, in violation of Article 90, Uniform Code of Military Justice (UCMJ). R. at 222. The military judge sentenced Appellant to a dismissal, confinement for 114 days, and a reprimand. R. at 245. The convening authority took no action with respect to the findings or sentence. Convening Authority Decision on Action. Appellant is confined.

The ROT is five volumes consisting of 10 prosecution exhibits, 16 defense exhibit, and 25 exhibits. The transcript is 245 pages long.



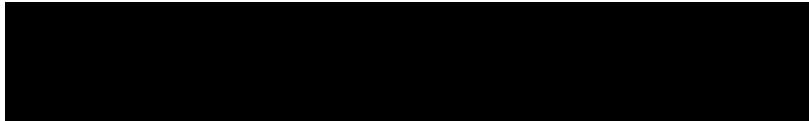
GRANTED
30 DEC 2024

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel's progress on his case.
- (4) Appellant has consented to this enlargement of time.

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

Respectfully submitted,

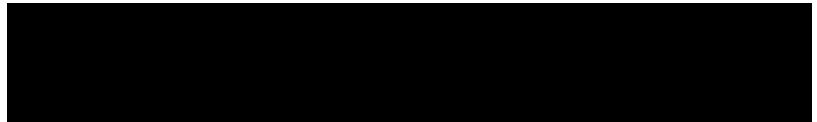


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 27 December 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

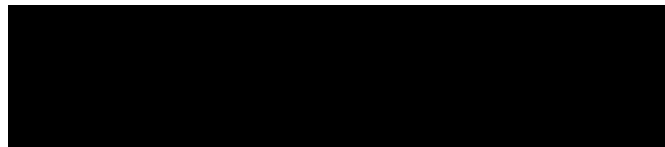
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	AMENDED MOTION FOR
v.	)	ENLARGEMENT OF TIME
)	
Captain (O-3)	)	ACM 40670
SHELLENE C. SAWYER, USAF)	
)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

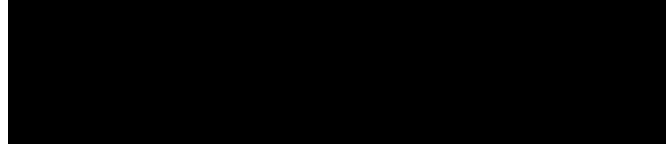
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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 30 December 2024.



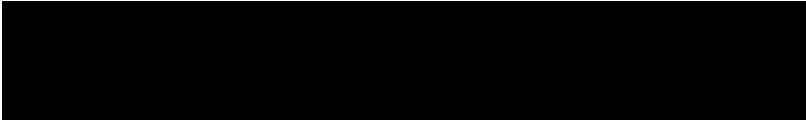
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel's progress on his case.
- (4) Appellant has consented to this enlargement of time.

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

Respectfully submitted,

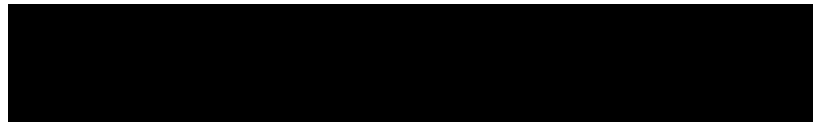


TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 27 January 2025.

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

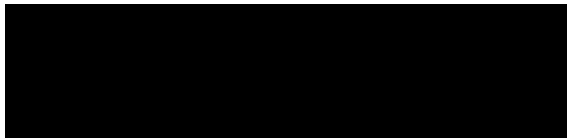
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Captain (O-3)	)	ACM 40670
SHELLENE C. SAWYER, USAF)	
)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(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 29 January 2025.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FOURTH)
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	27 February 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 April 2025**. This case was docketed with this Court on 9 September 2024. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 2 and 28 May 2024, R. at 1, 165, Appellant was tried by a general court-martial comprised of a military judge sitting alone. R. at 170. Consistent with her pleas, R. at 171-72, Appellant was found guilty of one charge and specification of willfully disobeying a superior commissioned officer, in violation of Article 90, Uniform Code of Military Justice (UCMJ). R. at 222. The military judge sentenced Appellant to a dismissal, confinement for 114 days, and a reprimand. R. at 245. The convening authority took no action with respect to the findings or

ce. Convening Authority Decision on Action. Appellant is confined.

ROT is five volumes consisting of 10 prosecution exhibits, 16 defense exhibit, and 25
e exhibits. The transcript is 245 pages long.



GRANTED
3 MAR 2025

Undersigned counsel is assigned 30 cases, 18 cases are pending initial AOE's before this Court. Two cases before the Court of Appeals for the Armed Forces takes priority over this case: *United States v. Couty* and *United States v. Beyer*. Undersigned counsel has begun research in preparation for a supplement in *Couty*. Undersigned counsel has not yet begun work on *Beyer*. In addition, the following cases before this case take priority over this case:

- 1) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. Undersigned counsel has completed a review of all unsealed materials. A review of sealed materials will begin next week. A brief, if any, will be filed with this Court no later than 14 March 2025.
- 2) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has reviewed approximately 850 pages of this record and filed a motion to review sealed materials, which this Court granted. This appellant recently retained civilian counsel. Civilian counsel are in the process of obtaining the record of trial in this case. Additionally, undersigned and civilian counsel will review sealed materials in this case today, 27 February 2025.
- 3) *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages. Undersigned counsel has not begun a review of this record.
- 4) *United States v. Augustin*, ACM 40655 – The record of trial is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, and 24 appellate exhibits, and one court

exhibit. The transcript is 1,201 pages long. Undersigned counsel has not begun a review of this record.

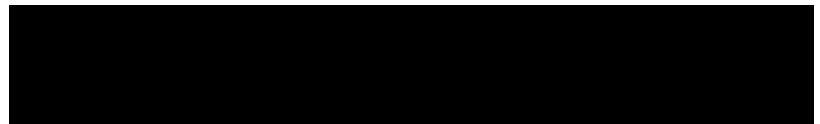
- 5) *United States v. Hon*, ACM 40671 – The record of trial is six volumes long consisting of 14 prosecution exhibits, seven defense exhibits, 28 appellate exhibits, and one court exhibit. The transcript is 483 pages long.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant’s case. An enlargement of time is necessary to allow counsel time to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel’s progress on his case.
- (4) Appellant has consented to this enlargement of time.

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

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 27 February 2025.

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

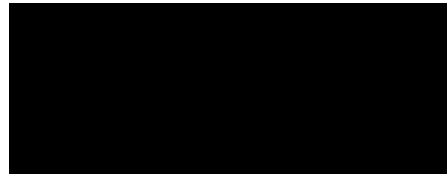
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Captain (O-3)	)	ACM 40670
SHELLENE C. SAWYER, USAF)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
Government Trial and
Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(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 28 February 2025.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
Government Trial and
Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIFTH)
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	25 March 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her fifth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **7 May 2025**. This case was docketed with this Court on 9 September 2024. From the date of docketing to the present date, 197 days have elapsed. On the date requested, 240 days will have elapsed.

On 2 and 28 May 2024, R. at 1, 165, Appellant was tried by a general court-martial comprised of a military judge sitting alone. R. at 170. Consistent with her pleas, R. at 171-72, Appellant was found guilty of one charge and specification of willfully disobeying a superior commissioned officer, in violation of Article 90, Uniform Code of Military Justice (UCMJ). R. at 222. The military judge sentenced Appellant to a dismissal, confinement for 114 days, and a reprimand. R. at 245. The convening authority took no action with respect to the findings or sentence. Convening Authority Decision on Action. Appellant is confined.

Exhibits. The transcript is 245 pages long.



GRANTED
26 MAR 2025

Undersigned counsel is assigned 29 cases, 17 cases are pending initial AOE's before this Court. One case before the Supreme Court takes priority over this case: *United States v. Kelnhofer*. Undersigned counsel has not begun drafting this petition. Three cases before the Court of Appeals for the Armed Forces (CAAF) take priority over this case: (1) *United States v. Couty*; *United States v. Beyer*; and (3) *United States v. Covitz*. Undersigned counsel has begun research in *Couty* but has not begun drafting; for the remaining CAAF cases, undersigned counsel has not begun work.

In addition, the following cases before this Court take priority over this case:

- 1) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. The Government has sought an enlargement of time to file its Answer on 27 April 2025. If granted, this appellant's reply would be due on 5 May 2025.
- 2) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has completed a review of the record. Civilian co-counsel is presently reviewing the record. However, the copy received by the civilian co-counsel from this appellant was heavily redacted. It is unclear why the Government chose to redact non-sealed and non-sensitive information. Regardless, undersigned counsel spent considerable time scanning and sending the unsealed record to civilian co-counsel. This copy of the record was sent to the civilian co-counsel and it is presently being reviewed.

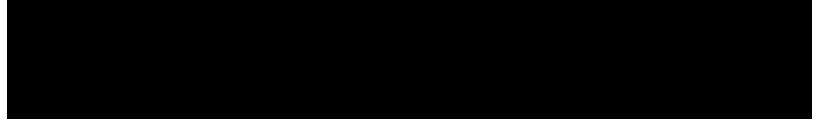
- 3) *United States v. Augustin*, ACM 40655 – The record of trial is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, and 24 appellate exhibits, and one court exhibit. The transcript is 1,201 pages long. Undersigned counsel has not begun a review of this record.
- 4) *United States v. Ehly*, ACM23004 – The record of trial is three volumes consisting of three prosecution exhibits and 14 appellate exhibits. The transcript is 183 pages long. Undersigned counsel has not begun a review of this record.
- 5) *United States v. Lawrence*, ACM 20464 – The record of trial is two volumes consisting of 13 prosecution exhibits, 10 defense exhibits, and five appellate exhibits. The transcript is 126 pages long. Undersigned counsel has not begun a review of this record.
- 6) *United States v. Hon*, ACM 40671 – The record of trial is six volumes long consisting of 14 prosecution exhibits, seven defense exhibits, 28 appellate exhibits, and one court exhibit. The transcript is 483 pages long.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel's progress on his case.
- (4) Appellant has consented to this enlargement of time.

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

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 25 March 2025.

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

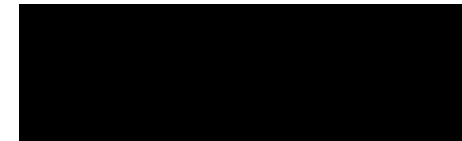
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 1
Captain (O-3))	
SHELLENE C. SAWYER,	)	No. ACM 40670
United States Air Force,)	
<i>Appellant.</i>)	
	)	26 March 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.

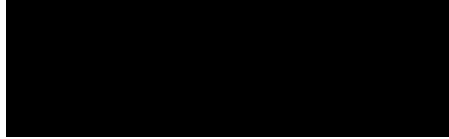
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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 26 March 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR ENLARGEMENT OF TIME (SIXTH)
<i>Appellee,</i>)	
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	28 April 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her sixth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **6 June 2025**. This case was docketed with this Court on 9 September 2024. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 2 and 28 May 2024, R. at 1, 165, Appellant was tried by a general court-martial comprised of a military judge sitting alone. R. at 170. Consistent with her pleas, R. at 171-72, Appellant was found guilty of one charge and specification of willfully disobeying a superior commissioned officer, in violation of Article 90, Uniform Code of Military Justice (UCMJ). R. at 222. The military judge sentenced Appellant to a dismissal, confinement for 114 days, and a reprimand. R. at 245. The convening authority took no action with respect to the findings or sentence. Convening Authority Decision on Action. Appellant is confined.

The ROT is five volumes consisting of 10 prosecution exhibits, 16 defense exhibit, and 25 e exhibits. The transcript is 245 pages long.



GRANTED

1 MAY 2025

Undersigned counsel is assigned 31 cases, 19 cases are pending initial AOE's before this Court. One case before the Supreme Court takes priority over this case: *United States v. Kelnhofer*. Undersigned counsel has completed research but not begun drafting this petition. Three cases before the Court of Appeals for the Armed Forces (CAAF) take priority over this case: (1) *United States v. Washington*; *United States v. Beyer*; and (3) *United States v. Covitz*. Undersigned counsel has begun drafting in *Washington* as well as begun work on the joint appendix. Undersigned counsel has begun research in *Beyer*.

In addition, the following cases before this Court take priority over this case:

- 1) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. The Government's Answer is due on 15 May 2025, with any reply being due on 22 May 2025.
- 2) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has completed a review of the record. Civilian co-counsel is presently reviewing the record.
- 3) *United States v. Augustin*, ACM 40655 – The record of trial is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, and 24 appellate exhibits, and one court exhibit. The transcript is 1,201 pages long. Undersigned counsel has not begun a review of this record, but civilian co-counsel has completed a review of the record.
- 4) *United States v. Ehly*, ACM 23004 – The record of trial is three volumes consisting of three prosecution exhibits and 14 appellate exhibits. The transcript is 183 pages long. Undersigned counsel has not begun a review of this record.

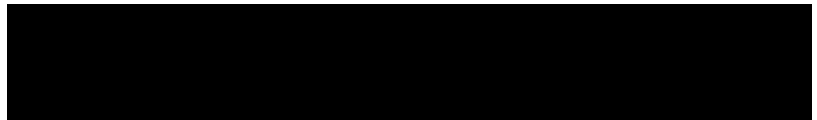
- 5) *United States v. Lawrence*, ACM 20464 – The record of trial is two volumes consisting of 13 prosecution exhibits, 10 defense exhibits, and five appellate exhibits. The transcript is 126 pages long. Undersigned counsel has not begun a review of this record.
- 6) *United States v. Hon*, ACM 40671 – The record of trial is six volumes long consisting of 14 prosecution exhibits, seven defense exhibits, 28 appellate exhibits, and one court exhibit. The transcript is 483 pages long.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel's progress on his case.
- (4) Appellant has consented to this enlargement of time.

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

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 25 March 2025.

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

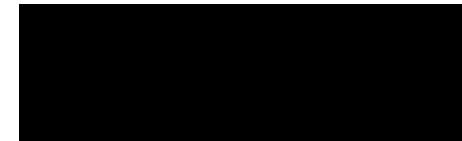
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 1
Captain (O-3))	
SHELLENE C. SAWYER,	)	No. ACM 40670
United States Air Force,)	
<i>Appellant.</i>)	
	)	29 April 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.

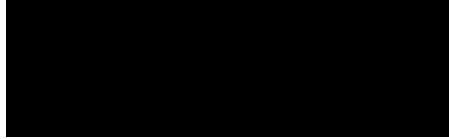
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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 29 April 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME(SEVENTH)
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	27 May 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her seventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **6 July 2025**. This case was docketed with this Court on 9 September 2024. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 2 and 28 May 2024, R. at 1, 165, Appellant was tried by a general court-martial comprised of a military judge sitting alone. R. at 170. Consistent with her pleas, R. at 171-72, Appellant was found guilty of one charge and specification of willfully disobeying a superior commissioned officer, in violation of Article 90, Uniform Code of Military Justice (UCMJ). R. at 222. The military judge sentenced Appellant to a dismissal, confinement for 114 days, and a reprimand. R. at 245. The convening authority took no action with respect to the findings or sentence. Convening Authority Decision on Action. Appellant is not confined.



ROT is five volumes consisting of 10 prosecution exhibits, 16 defense exhibit, and 25 bits. The transcript is 245 pages long.

GRANTED
28 MAY 2025

Undersigned counsel is assigned 31 cases, 19 cases are pending initial AOE's before this Court. Two cases before the Court of Appeals for the Armed Forces (CAAF) take priority over this case: (1) *United States v. Washington*; and (2) *United States v. Covitz*. The Government's Answer in *Washington* is due on 30 May 2025, with any reply due on 6 June 2025. Undersigned counsel has completed research and has begun drafting the supplement brief in *Covitz*.

In addition, the following cases before this Court take priority over this case:

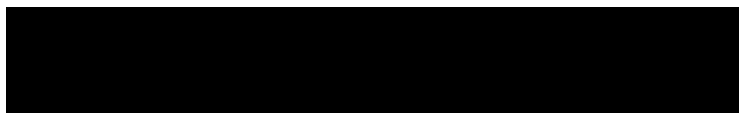
- 1) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has completed a review of the record. Civilian co-counsel has completed his review and is presently drafting the AOE brief.
- 2) *United States v. Augustin*, ACM 40655 – The record of trial is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, and 24 appellate exhibits, and one court exhibit. The transcript is 1,201 pages long. Undersigned counsel has not begun a review of this record, but civilian co-counsel has completed a review of the record.
- 3) *United States v. Ehly*, ACM 23004 – The record of trial is three volumes consisting of three prosecution exhibits and 14 appellate exhibits. The transcript is 183 pages long. Undersigned counsel has not begun a review of this record.
- 4) *United States v. Lawrence*, ACM 20464 – The record of trial is two volumes consisting of 13 prosecution exhibits, 10 defense exhibits, and five appellate exhibits. The transcript is 126 pages long. Undersigned counsel has not begun a review of this record.
- 5) *United States v. Hon*, ACM 40671 – The record of trial is six volumes long consisting of 14 prosecution exhibits, seven defense exhibits, 28 appellate exhibits, and one court exhibit. The transcript is 483 pages long.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel's progress on his case.
- (4) Appellant has consented to this enlargement of time.

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

Respectfully submitted,

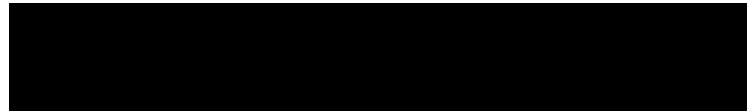


TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 27 May 2025.

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 1
Captain (O-3))	
SHELLENE C. SAWYER,	)	No. ACM 40670
United States Air Force,)	
<i>Appellant.</i>)	
	)	28 May 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 opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If appellant’s new delay request is granted, the defense delay in this case will be 300 days in length. Appellant’s nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two-thirds of the 18 months standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

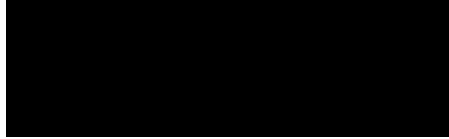
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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 28 May 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME (EIGHTH)
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	26 June 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her eighth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **5 August 2025**. This case was docketed with this Court on 9 September 2024. From the date of docketing to the present date, 290 days have elapsed. On the date requested, 330 days will have elapsed.

On 2 and 28 May 2024, R. at 1, 165, Appellant was tried by a general court-martial comprised of a military judge sitting alone. R. at 170. Consistent with her pleas, R. at 171-72, Appellant was found guilty of one charge and specification of willfully disobeying a superior commissioned officer, in violation of Article 90, Uniform Code of Military Justice (UCMJ). R. at 222. The military judge sentenced Appellant to a dismissal, confinement for 114 days, and a reprimand. R. at 245. The convening authority took no action with respect to the findings or sentence. Convening Authority Decision on Action. Appellant is not confined.

The ROT is five volumes consisting of 10 prosecution exhibits, 16 defense exhibit, and 25 exhibits. The transcript is 245 pages long.



GRANTED
27 JUN 2025

Undersigned counsel is assigned 34 cases, 21 cases are pending initial AOE's before this Court. One case before the United States Supreme Court takes priority over this case: *United States v. Kelnhofer*. Undersigned counsel has not yet begun work on the petition for writ of certiorari. In addition, two cases before the Court of Appeals for the Armed Forces (CAAF) take priority over this case: (1) *United States v. Washington*; and (2) *United States v. Gibbs*. The reply in *Washington* is due on 27 June 2025. Undersigned and civilian co-counsel are presently drafting the reply. Undersigned counsel has not yet begun work on *Gibbs*.

In addition, the following cases before this Court take priority over this case:

- 1) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. The Government has requested an open-ended enlargement for its Answer, which this Court has not yet granted. However, undersigned counsel anticipates a reply brief in this case, ostensibly due seven days after the Government files its answer.
- 2) *United States v. Augustin*, ACM 40655 – The record of trial is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, and 24 appellate exhibits, and one court exhibit. The transcript is 1,201 pages long. Undersigned counsel has completed a review of the unsealed record, with the exception of the transcript. Civilian co-counsel has completed a review of the record.
- 3) *United States v. Ehly*, ACM 23004 – The record of trial is three volumes consisting of three prosecution exhibits and 14 appellate exhibits. The transcript is 183 pages long. Undersigned counsel has completed a review of the record and has begun drafting an AOE brief.

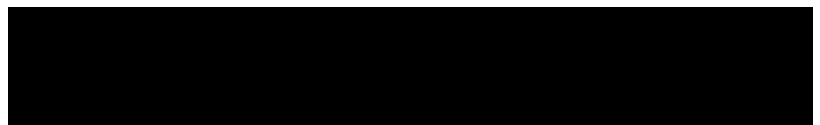
- 4) *United States v. Lawrence*, ACM 20464 – The record of trial is two volumes consisting of 13 prosecution exhibits, 10 defense exhibits, and five appellate exhibits. The transcript is 126 pages long. Undersigned counsel has not begun a review of this record.
- 5) *United States v. Hon*, ACM 40671 – The record of trial is six volumes long consisting of 14 prosecution exhibits, seven defense exhibits, 28 appellate exhibits, and one court exhibit. The transcript is 483 pages long.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel's progress on his case.
- (4) Appellant has consented to this enlargement of time.

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

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 26 June 2025.

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 1
Captain (O-3))	
SHELLENE C. SAWYER,	)	No. ACM 40670
United States Air Force,)	
<i>Appellant.</i>)	
	)	27 June 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 opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 330 days in length. Appellant’s nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

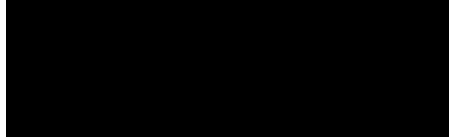
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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 27 June 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

The ROT is five volumes consisting of 10 prosecution exhibits, 16 defense exhibit, and 25 appellate exhibits. The transcript is 245 pages long.

Undersigned counsel is assigned 34 cases, 21 cases are pending initial AOE's before this Court. One case before the Court of Appeals for the Armed Forces (CAAF) takes priority over this case: *United States v. Gibbs*. The supplement brief will be drafted by end of day and will be filed next week.

In addition, the following cases before this Court take priority over this case:

- 1) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel is awaiting the Government's Answer.
- 2) *United States v. Augustin*, ACM 40655 – The record of trial is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, and 24 appellate exhibits, and one court exhibit. The transcript is 1,201 pages long. Undersigned counsel and civilian co-counsel have completed their reviews of the record, but drafting of the AOE has not yet begun.
- 3) *United States v. Ehly*, ACM 23004 – The record of trial is three volumes consisting of three prosecution exhibits and 14 appellate exhibits. The transcript is 183 pages long. Undersigned counsel is awaiting the Government's answer.²

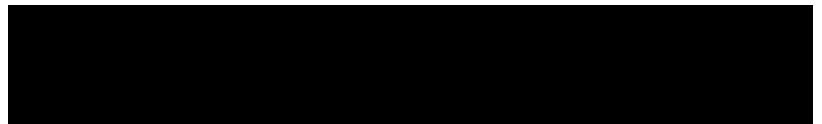
Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

² Two additional cases (*United States v. Lawrence*, ACM 20464, and *United States v. Hon*, ACM 40671) previously had priority over this case. However, shifting priorities of the clients necessitated this switch.

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel's progress on his case.
- (4) Appellant has consented to this enlargement of time.

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

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 25 July 2025.

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 1
Captain (O-3))	
SHELLENE C. SAWYER,	)	No. ACM 40670
United States Air Force,)	
<i>Appellant.</i>)	
	)	25 July 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 opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 360 days in length. Appellant’s nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

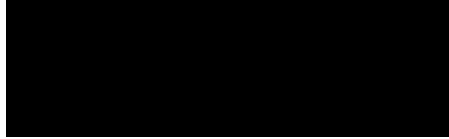
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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 25 July 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	BRIEF ON BEHALF OF
<i>Appellee,</i>	)	APPELLANT
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	29 August 2025
<i>Appellant.</i>)	

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

ASSIGNMENT OF ERROR

**IS CAPT SAWYER’S ADJUDGED SENTENCE, WHICH
INCLUDES 114 DAYS OF CONFINEMENT AND A
DISMISSAL, INAPPROPRIATELY SEVERE?**

STATEMENT OF THE CASE

On 28 May 2024, a military judge sitting as a general court-martial convicted Captain Shellene C. Sawyer, consistent with her pleas, of one specification of willfully disobeying a superior commissioned officer in violation of Article 90, Uniform Code of Military Justice (UCMJ). R. at 222. The military judge sentenced Appellant to a dismissal, confinement for 114 days, and a reprimand. R. at 245. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

STATEMENT OF FACTS

Capt Sawyer’s Air Force Career

At the time of her court-martial, Capt Sawyer had served over 19 years in the Air Force. Pros. Ex. 3. Capt Sawyer first enlisted in January of 2005. Pros. Ex. 3. She served fifteen years as an enlisted member before commissioning. R. at 185. By all accounts, prior to her alcohol addiction, Capt Sawyer was a terrific Airman. *See generally* Pros. Ex. 4 (showing tremendous

officer performance evaluations). She was frequently rated above her peers in performance and leadership. Pros. Ex. 4 at 3-10. In fact, immediately preceding her alcohol addiction, Capt Sawyer was selected as her squadron's company grade officer of the year. Def. Ex. J.

For reasons unknown, the Government chose not to present Capt Sawyer's enlisted performance reports (EPRs) at presentencing, as required by *Department of the Air Force Instruction 51-201*, dated Jan. 24, 2024, para. 19.12.2. But given her stellar officer evaluations—and the fact that Capt Sawyer later commissioned—it is likely her EPRs, too, were tremendous.

Capt Sawyer begins Drinking

Capt Sawyer has alcohol dependency syndrome. R. at 186. Recognizing the impacts of this disease, Capt Sawyer was sober for seven years between 2016 and 2023. R. at 185. However, by the Spring of 2023, Capt Sawyer's life was falling apart. R. at 185. As she transitioned into her role as a flight commander, she was having significant marital troubles which led to divorce. R. at 185. Regretfully, Capt Sawyer turned to alcohol to conceal her emotions and cope with these significant stressors. R. at 185.

Capt Sawyer's alcohol condition does not cause her to drink every day. R. at 185. Instead, her disease presents as "binge drinking." R. at 185. That is to say that, once she starts drinking, she cannot stop. R. at 185.

Recognizing that her alcoholism was out of control, Capt Sawyer desperately sought help. She submitted to in-person treatment with the Alcohol and Drug Abuse Prevention Treatment Program (ADAPT), engaged with intensive outpatient treatment, and frequently attended Alcoholics Anonymous (AA) meetings. R. at 186. Capt Sawyer was grateful for these services, recognizing that they provided "coping mechanisms." However, these coping mechanisms were not enough. R. at 186

Capt Sawyer's Addiction Takes Over

At the time of her trial, Capt Sawyer realized there was no way to control her drinking—having just one drink puts her in danger of not being able to stop. R. at 186. But prior to the misconduct in this case, Capt Sawyer mistakenly thought she could control her alcoholism. R. at 186. This mistaken belief resulted in a series of alcohol-related incidents. R. at 186. In an attempt to stop Capt Sawyer from drinking, her commander issued her an order not to drink alcohol. R. at 186-87.

Capt Sawyer struggled for several months. R. at 186-87. But by December 2023, she “had no issues.” R. at 187. She had a good support system and, through her inpatient treatment, had gained the skills to resist her addiction. R. at 187. By 1 January 2024, Capt Sawyer believed she had beat alcoholism and could have “a single celebratory drink” to celebrate the New Year. R. at 187. As she recognized at trial, however, she was mistaken; she could not control her drinking. R. at 188. On New Year’s Day Capt Sawyer became so intoxicated she had to be hospitalized. Pros. Ex. 1 at 3. Her blood alcohol content at the time of intake was 0.367%. Pros. Ex. 1 at 3.

Capt Sawyer Pleads Guilty

Recognizing that her conduct was wrongful, Capt Sawyer pled guilty. R. at 190. By doing so, Capt Sawyer waived many rights associated with a fully litigated court-martial. Pros. Ex. 1 at 3. In so doing, the Government agreed that she saved it “considerable time and resources.” Pros. Ex. 1 at 3.

ARGUMENT

Capt Sawyer’s adjudged sentence to 114 days of confinement and a dismissal is inappropriately severe.

A. Standard of Review

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

B. Law and Analysis

Capt Sawyer’s sentence to a dismissal and 114 days of confinement is inappropriately severe considering the nature of the offense for which she was convicted and her stellar Air Force career. As such, this Court should order relief by disapproving the dismissal.

Article 66(d)(1), UCMJ, “provides that [this Court] ‘may affirm only . . . 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.’” *United States v. Flores*, 84 M.J. 277, 280-81 (C.A.A.F. 2024). Fundamentally, this means that this Court must “determine whether it finds the sentence to be appropriate.” *Id.* at 281 (citation omitted).

This Court has “broad discretion to determine whether a sentence should be approved, a power that has no direct parallel in the federal civilian sector.” *United States v. Behunin*, 83 M.J. 158, 161 (C.A.A.F. 2023) (citation modified). And, while this Court need not grant relief merely as a matter of clemency, *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc), it is required to “do justice.” *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010). In assessing sentence appropriateness, this Court considers “the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all matters contained in the record of trial.” *Flores*, 84 M.J. at 279 (quoting *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct.

Crim. App. 2009)). This Court also takes into consideration “uniformity and evenhandedness of sentencing decisions.” *United States v. Sothen*, 54 M.J. 294, 296 (C.A.A.F. 2001).

The nature and seriousness of the offense for which Capt Sawyer is convicted does not warrant both 114 days of confinement and a dismissal. Capt Sawyer violated an order not to drink alcohol by drinking on New Years Day. That is the extent of the misconduct for which Capt Sawyer is convicted. While there is evidence in the record to suggest Capt Sawyer committed additional misconduct prior to being brought to court-martial, her sentence is for the offense for which she pled guilty. R.C.M. 1002(c) (discussing the offense for which an accused is found guilty). Ultimately, the nature of this offense is not serious. Capt Sawyer was ordered not to drink by her commander. She made significant efforts from the time of that order to get help, including inpatient and outpatient medical treatment. And, by December 2023, Capt Sawyer was sober.

While Capt Sawyer made the unfortunate decision to have a celebratory drink on New Years Eve—resulting in a binge drinking episode and hospitalization—she was not charged with any additional misconduct from that day. Adjudging over 100 days of confinement and a dismissal—which comes with significant social stigma and severe limitations on access to benefits—is far greater than necessary when considering the nature of the offense.

Capt Sawyer’s record of service is also extraordinary. Prior to her divorce and addiction to alcohol, Capt Sawyer was a terrific Airman. She excelled both as a leader and as a health care professional. And while we cannot know the nature of her enlisted service due to the Government’s failure to admit her records, it can be presumed that her service as an enlisted troop was similarly great. That is to say, except for her addiction to alcohol, Capt Sawyer served over 19 years with distinction.

When reviewing the seriousness of the offense for which Capt Sawyer pled guilty and her service record, it is clear that the sentence is inappropriately severe. And, while Capt Sawyer ultimately agreed to a sentence that included a dismissal, App. Ex. XIII at 2, this is not dispositive. Just because a plea agreement contains certain sentencing terms does not mean that those terms are inherently appropriate. For example, in *United States v. Kerr*, the Navy-Marine Corps Court of Criminal Appeals held that a bad-conduct discharge was an inappropriate sentence, even though it was required to be adjudged by the plea agreement. No. 202200140, 2023 CCA LEXIS 434, at *8 n.23 (N-M Ct. Crim. App. Oct. 17, 2023).

When, like here, a plea agreement provides for minimum and maximum punishments that are the same, “the role of [appellate judges] as ultimate assessors of sentence appropriateness has become all the more important.” *Id.* at *8. As such, this Court must do “justice.” *Nerad*, 69 M.J. at 146. And justice is not served by dismissing an officer with over nineteen years of service for drinking alcohol on New Year’s Day—especially when over 100 days of confinement was also adjudged. Therefore, this Court should find the sentence inappropriately severe and disapprove the dismissal.

Respectfully Submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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(240) 612-2807

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 29 August 2025.

Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME (TENTH)
)	
v.	)	Before Panel 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	28 August 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her tenth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of seven (7) days, which will end on **11 September 2025**.¹ This case was docketed with this Court on 9 September 2024. From the date of docketing to the present date, 353 days have elapsed. On the date requested, 367 days will have elapsed.

On 2 and 28 May 2024, R. at 1, 165, Appellant was tried by a general court-martial comprised of a military judge sitting alone. R. at 170. Consistent with her pleas, R. at 171-72, was found guilty of one charge and specification of willfully disobeying a superior officer, in violation of Article 90, Uniform Code of Military Justice (UCMJ). R. at 222. The military judge sentenced Appellant to a dismissal, confinement for 114 days, and a



GRANTED

3 SEP 2025

¹ In Appellant’s motion for EOT (Ninth), undersigned counsel represented that, absent exceptional circumstances, that would be this Appellant’s last request for an EOT. Since that filing, the Appellant has expressed a desire to raise additional matters not previously briefed by undersigned counsel. These matters, if raised, could potentially impact Appellant’s life and require additional advice to Appellant. The time requested—seven days—will provide undersigned counsel the opportunity to fully advise Appellant on those matters- and, if requested, research and brief the matters raised. The Appellant has consented to this disclosure of an attorney client privileged communication.

reprimand. R. at 245. The convening authority took no action with respect to the findings or sentence. Convening Authority Decision on Action. Appellant is not confined.

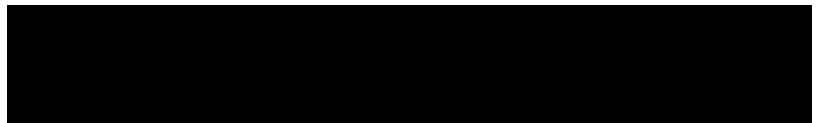
The ROT is five volumes consisting of 10 prosecution exhibits, 16 defense exhibit, and 25 appellate exhibits. The transcript is 245 pages long. Undersigned counsel is assigned 25 cases, 11 cases are pending initial AOE's before this Court. No case before any Court takes priority over Appellant's.

Undersigned counsel has been unable to adequately advise Appellant on additional matters not previously researched or briefed. An enlargement of time is necessary to allow counsel time to fully advise Appellant and, if requested, research and draft additional assignments of error. Appellant has provided limited consent to disclose confidential communications, wherein:

- (1) Appellant has been advised of her right to a timely appeal.
- (2) Appellant has been advised of this request for enlargement of time.
- (3) Appellant has been apprised of the status of undersigned counsel's progress on his case.
- (4) Appellant has specifically requested and consents to this enlargement of time.

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

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
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United States Air Force
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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 28 August 2025.

Respectfully submitted,



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Appellate Defense Counsel
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 1
Captain (O-3))	
SHELLENE C. SAWYER,	)	No. ACM 40670
United States Air Force,)	
<i>Appellant.</i>)	
	)	2 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 opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's over year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities.

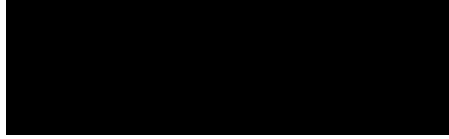
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



VANESSA BAIROS, Maj, USAF
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Government Trial and Appellate Operations Division
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(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 2 September 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
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(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	ANSWER TO ASSIGNMENT
<i>Appellee,</i>	)	OF ERROR
)	
v.)	
	)	No. ACM 40670
Captain (0-3))	
SHELLENE SAWYER,	)	Before Panel No. 1
United States Air Force)	
<i>Appellant.</i>	)	18 September 2025

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

ISSUE PRESENTED

**[WHETHER] APPELLANT’S ADJUDGED SENTENCE,
WHICH INCLUDES 114 DAYS OF CONFINEMENT AND A
DISMISSAL, INAPPROPRIATELY SEVERE.**

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

Appellant’s Crimes

On 28 May 2024, Appellant pleaded guilty to the following offense in violation of Article 90, UCMJ:

You, having received a lawful command from Colonel Keegan M. Lyons, your superior commissioned officer, then known by you to be your superior commissioned officer, to refrain from consuming alcohol, or words to that effect, did within the continental United States, on or about a January 2024, willfully disobey the same.

(Entry of Judgement, 28 May 2024, ROT, Vol. 1.)

In August 2022, Appellant was an active-duty member of the United States Air Force assigned to the 9th Healthcare Operations Squadron (9 HCOS) at Beale Air Force Base,

California. (Pros. Ex. 1 at 1.) Colonel Keegan M. Lyons was the 9th Medical Group (MDG) Commander since 28 June 2023 and was Appellant's commanding officer. (Id.)

On 1 August 2023, Appellant was drunk on duty and was offered NJP on 12 September 2023. *Id.* On 23 August 2023, Appellant was involved in a car accident with a civilian driver and left the scene of the crash without providing her information. (Id. at 2.) A breathalyzer test revealed her blood alcohol content (BAC) was at 0.36%. (Id.) On 2 October 2023, Appellant operated a motor vehicle on base while under the influence of alcohol and drove off the roadway, striking government property. *Id.* She was offered NJP on 11 October 2023 for this incident. (Id.)

Following these incidents, Colonel Lyons issued a lawful order to Appellant not to operate a motor vehicle or consume alcohol on 10 October 2023. (Id.) On 26 October 2023, the order was amended to allow Appellant to drive to alcohol treatment related appointments. (Id.) On the week of 27 November 2023, Appellant's husband notified her leadership that she had been drinking again and was admitted to obtain detoxification treatment at a facility. (Id. at 1.) December 2023, Colonel Lyons reissued the order that prohibited Appellant from driving. (Id.)

On 1 January 2024, Appellant was driven onto base by a friend. (Id.) That friend did not have a license and was denied access to base. (Id.) Appellant left her Common Access Card (CAC) with security and walked to her on-base residence. (Id.) When security forces members attempted to return her CAC, they saw that Appellant was intoxicated and took her to a medical facility where a toxicology test revealed her BAC was 0.367%. (Id. at 3.) She was held in pretrial confinement starting 4 February 2024. (Pros. Ex. 2.)

Appellant's Service History

Appellant has been in the United States Air Force since 2004. (Pros. Ex. 1 at 1.) She started off as an enlisted member on active duty and completed her initial enlistment in 2008. (Id.) She serviced in the Air Force Reserve from 2008-2012. (Id.) Following her Reserve service, she enlisted in the South Carolina Air National Guard from 2013-2018. (Id.) She re-enlisted in the Air Force in 2018 and became a commissioned officer in 2019. (Id.) She achieved the rank of Captain on 23 July 2023. (Id.) In addition to the incidents noted above, Appellant also received multiple Letters of Reprimand (LOR) for offenses that include fraternization, sleeping on duty, and failure to attend alcohol treatment related appointments. (Pros. Ex. 5-8.)

Appellant's Plea Agreement

Appellant was charged with two specifications of willfully disobeying a lawful order from a superior commissioned officer in violation of Article 90, Uniform Code of Military Justice (UCMJ). (*Charge Sheet*, 23 February 2024, ROT, Vol. 1.) Pursuant to a plea agreement, Appellant pleaded guilty one specification of the charge. (*Entry of Judgement*, 28 May 2024, ROT, Vol. 1.; App. Ex. XXIV.) In return for a guilty plea, the trial counsel would withdraw and dismiss with prejudice one of the specifications and strike the divers occasions language in the other. (App Ex. XXIV at 1.) Further, in return for Appellant's guilty plea, the military judge was required to enter a sentence as follows:

- a. Punitive Discharge: Dismissal
- b. Confinement:
For Specification 1 of the Charge: confinement equal to the number of days the Appellant was in pretrial confinement as of the date the military judge accepts the guilty plea
- c. Reprimand

- d. Other Limitations: The military judge shall not adjudge any fine, forfeitures of pay, hard labor or restrictions.

(Id. at 2.) Appellant agreed and signed the plea agreement. (Id. at 3.) During the Care inquiry, the military judge confirmed that Appellant was aware of the entire contents of the agreement and its ramifications:

MJ: ... the parties essentially agree to a specified sentence in this case which is allowable under the new rules. And that sentence is a dismissal, reprimand, and confinement that matches time served. The court cannot impose any other punishment, specifically fines, forfeitures, restrictions, or hard labor. Do you understand the limitations of the court's discretion in terms of what the sentence in this case will be, assuming I accept the plea agreement?

ACC: Yes, sir.

...

MJ: Do you understand the only discharge this court can impose is a dismissal?

ACC: Yes, sir.

MJ: Do you understand that a dismissal will forever adversely stigmatize the character of your military service and will limit your future employment and schooling opportunities?

ACC: Yes, sir.

MJ: Do you understand that a dismissal may adversely affect your future with regard to legal rights, economic opportunities, and social acceptability?

ACC: Yes, sir.

MJ: Do you understand that being dismissed, you will lose substantially all benefits from the Department of Veterans Affairs and the military establishment, as well as other benefits normally given by other governmental agencies?

ACC: Yes, sir.

MJ: Do you understand that a dismissal terminates your military status and it will deprive you of any military benefits, to include retirement pay?

ACC: Yes, sir.

MJ: Have you thoroughly discussed your desire regarding dismissal with your defense counsel?

ACC: Yes, sir.

MJ: Do you believe you fully understand the ramifications of a dismissal?

ACC: Yes, sir.

MJ: Are you aware that if you do not receive a punitive discharge from this court martial, a dismissal, then your chain of command may very well try to administratively separate you from the service?

ACC: Yes, sir.

MJ: Are you aware that administrative separation is considered much less severe than a discharge from a court martial and will not stigmatize you with the devastating and long-term effects of a dismissal from a court-martial?

ACC: Yes, sir.

MJ: Knowing all that I and your defense counsel have explained to you, is it your expressed desire to be dismissed from the service in order to receive the benefits of your plea agreement?

ACC: Yes, sir.

(R. at 211-12, 214-15.) Appellant knew the plea would result in a dismissal, and still believed it was a fair deal secured by a competent trial defense counsel. (R. at 211-15, App Ex. XXIV.)

ARGUMENT

APPELLANT’S ADJUDGED SENTENCE IS APPROPRIATE.

Standard of Review

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

Law

“Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves.” United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988). This Court should affirm sentences it finds correct in law and fact and determines, based on the entire record, should be approved. Article 66(d), UCMJ.

In order to determine the appropriateness of the sentence, this Court must consider: (1) the particular appellant, (2) the nature and seriousness of the offense, (3) the appellant’s record of service, and (4) all matters contained in the record of trial. United States v. Amador, 61 M.J. 619, 626 (A.F. Ct. Crim. App. 2005) (citing United States v. Snelling, 14 M.J. 267, 268 (C.M.A. 1982); United States v. Alis, 47 M.J. 817, 828 (A.F. Ct. Crim. App. 1998)). Unlike the act of bestowing mercy through clemency, which was delegated to other hands by Congress, Courts of Criminal Appeals are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. Healy, 26 M.J. at 395-96.

This Court has observed that the terms of a plea agreement can help determine whether a sentence is appropriate. United States v. Fields, 74 M.J. 619, 625 (A.F. Ct. Crim. App 2015) (“[A]ccused’s own sentence proposal is a reasonable justification of its probable fairness to him.”) (quoting United States v. Hendon, 6 M.J. 171, 175 (C.M.A. 1979)). The Navy-Marine Corps Court of Criminal Appeals (NMCCA) similarly stated that “although not dispositive, when

an accused who is represented by competent counsel bargains for a specific sentence, that is strong evidence that the sentence is not inappropriately severe and it will likely not be disturbed on appeal.” United States v. Avellaneda, 84 M.J. 656, 663 (N.M. Ct. Crim. App. 2024).

Analysis

Upon agreeing to a favorable plea agreement, Appellant seeks to reduce her sentence claiming that a dismissal is “inappropriately severe.” (App. Br. at 6.) As explained in detail below, Appellant’s claims fail because she agreed to accept a dismissal as punishment, and her sentence matched the severity of the crime committed.

A. Appellant’s willingness to agree to a plea agreement – that required the military judge to adjudicate a dismissal – was indicative of an appropriate sentence.

Appellant signed a plea agreement where she accepted a dismissal as a required part of the sentence. (App Ex. XXIV.) Appellant was also repeatedly instructed on the ramifications of accepting a dismissal as part of the sentence by the military judge. (R. at 211-215.) Yet despite those warnings, Appellant consistently agreed to accept such a punishment. (Id.) This makes sense since Appellant also received a number of concessions from the government in exchange for her plea of guilty including: (1) no additional confinement beyond the date of the sentence, (2) dismissal of the “divers occasions” language from one specification and dismissal with prejudice of the other, (3) no fine, (3) no forfeiture, (4) no hard labor, and (5) no restriction. (App Ex. XXIV.) The upshot is Appellant accepted a sentence that required a dismissal, which was a reasonable decision based on the significant concessions offered by the Government.

This Court considers an appellant’s own sentence proposal as weighing notably in favor of producing an appropriate sentence. Fields, 74 M.J. at 625. In Fields, the appellant voluntarily entered into a pretrial agreement and “voluntarily agreed to a sentence cap that limited confinement to no more than six months but did not prevent a punitive discharge.” 74 M.J. at

626. Similarly, here, Appellant voluntarily entered into a plea agreement and voluntarily agreed to a sentence that included a dismissal. This Court in Fields found the sentence to be appropriate due in part to the appellant's willingness to receive a bad-conduct discharge. Id. The same reasoning should apply here. The fact that the punitive discharge was required rather than allowed makes no material difference as it ultimately boils down to whether Appellant "voluntarily agreed" to the sentence, which she did.

B. The nature and circumstances of the Appellant's crime warrant a bad-conduct discharge.

Furthermore, the nature and circumstances of Appellant's offense warrant a dismissal. Regardless of the plea agreement, Appellant still could have received a dismissal. The only scenario where the possibility of a dismissal would have been eliminated was if Appellant had specifically bargained to prohibit one. That did not happen, and this was the type of case to warrant a dismissal.

Appellant describes the nature and circumstances of her offense as merely violating "an order not to drink alcohol by drinking on New Years Day." (App. Br. at 5.) The only way to arrive at that conclusion is to view the case in a vacuum. It is important to understand *why* the order was given in the first place. Before the lawful order was issued by her superior commissioned officer, Appellant had: (1) arrived to work drunk on duty which resulted in NJP, (2) left the scene of a car accident where she was intoxicated with a BAC of 0.36%, and (3) operated a motor vehicle on base while under the influence of alcohol and driving off the roadway, striking, and destroying government property for which she was offered another NJP. (Pros. Ex. 1.) It was in that context that she was given a lawful order not to consume alcohol. (Id.) Yet on 1 January 2024, not only did Appellant violate the order by consuming alcohol but was intoxicated to the point that her BAC level was 0.367%. (Id.) Simply put, Appellant did

more than just have a drink. Instead, she violated a lawful order that was given because of numerous alcohol related incidents and violated it by drinking at a level that could have been fatal. The order was given to prevent Appellant from engaging in a continuing course of destructive conduct. Despite knowing of the dire consequences that resulted from her drinking in the past and despite knowing of the order not to drink in the future, Appellant willfully disregarded that order. A dismissal from service was certainly warranted under the circumstances.

a) Appellant's length of service did not mitigate her crime.

Appellant argues that her 19 years of service prior to this action merit consideration. (App. Br. at 5.) The United States agrees those years should be considered, but for a different reason. The 19 years of service was an aggravating factor because Appellant knew better than to violate a lawful order. This is especially true given that she was an officer. Appellant "had the authority and thereby the responsibility to issue orders to others, and yet she herself was not able to lead by example and to follow the orders received from those above." (R. at 236.)

Appellant's service history was a demonstration of an aggravating factor under Rules for Court Martial, 1001(b)(4) that weighed in favor of the approved sentence that included a dismissal. Appellant's crime was not a one-time mistake, but one where she was engaging in dangerous behavior after being warned multiple times that it was unacceptable. Appellant's own words during the Care inquiry established that this was all a voluntary choice by her to drink that night despite all that had previously happened. (R. at 188.) Thus, her conduct merits a dismissal.

b) Appellant’s divorce and alcohol addiction did not mitigate her crimes.

Appellant attempts to argue that the nature and circumstances of his crime warrant no dismissal. (App. Br. at 6.) Appellant points to “her divorce and addiction to alcohol” that she was struggling with in the lead up to the offense. (App. Br. at 5.) Appellant disregards her own words during the Care inquiry:

MJ: Could you have refrained from drinking alcohol if you wanted at that point?

ACC: Yes, sir.

(R. at 197.) While these struggles can serve to weigh in the consideration of a sentence, the circumstances here presented a different reality than what Appellant portrays. Appellant drank a fatal amount of alcohol after being repeatedly warned not to do so. As established by this Court, the grounds for determining the appropriateness of a sentence are not from one specific aspect but require the review of the totality of facts and circumstances connected to the given case. Amador, 61 M.J. at 626 (citing Snelling, 14 M.J. at 268); Alis, 47 M.J. at 828. Under the totality of the facts and circumstances, a dismissal is appropriate.

c) Appellant’s reliance on United States v. Kerr is misplaced.

Finally, Appellant argues that her agreement to a sentence that included a dismissal was not dispositive and cites United States v. Kerr, No. 202200140, 2023 CCA LEXIS 434 (N.M. Ct. Crim. App. 17 October 2023) (unpub. op.); (App. Br. at 11.) Appellant mistakenly refers to Kerr as precedent, but this case is an unpublished opinion and therefore does not serve as binding precedent to this Court or the NMCCA.¹ But Appellant’s reliance on Kerr is not persuasive.

¹ Since Kerr, the NMCCA has twice denied similar arguments in other cases, one of which is binding to the NMCCA. See Avellaneda, 84 M.J. at 662 (“We held in Kerr that the bad-conduct discharge for that appellant under the specific circumstances of that case was inappropriately severe and set it aside. And the decision in that case was not a close call. In contrast, the

Kerr involved an appellant, convicted of stealing military property, who deployed to Afghanistan, and was assigned as security forces working on behalf of the U.S. Department of State at the Hamid Karzai International Airport as part of the U.S. withdrawal from Afghanistan in August 2021. Kerr, unpub. op. at 4-5. That appellant survived the Abbey Gate improvised explosive device (IED) bombing and saved a wounded Army soldier and a Marine by bringing them to safety. Kerr, unpub. op. at 5-6. That appellant scored “very high” on an evaluation for both traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD) due to the attack. Id. at 7-8. Based on these facts and circumstances, the court determined that an eight-month confinement sentence was adequate and set aside the punitive discharge. Id. at 8. A strong consideration was the fact that the trial military judge did not feel that a punitive discharge was appropriate given the extraordinary, extenuating circumstances but adjudged one pursuant to the plea agreement that mandated a bad-conduct discharge. Id.

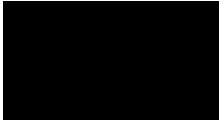

None of these extraordinary facts outlined in Kerr were present in this case. Appellant had a pattern of misconduct that involved alcohol related incidents prior to the charged offense. (Pros. Ex. 1.) While Appellant certainly had some positive performance reviews in her record and clearly has issues with alcohol abuse, they are not comparable to the Appellant in Kerr who experienced serious mental health issues because of a heroic service-related act that played a role in the charged offense. There is no evidence that Appellant’s alcohol issues were service connected (the evidence indicates they were personal), and there were no extraordinary or extenuating circumstances of her offense.


military judge in this case, who accepted the plea agreement, after conducting a detailed colloquy with Appellant and his counsel, accepted the plea agreement without expressing any reservation.”); *see also* Williams, unpub. op. at 5 (finding a plea agreement with a bad-conduct discharge included lends to the sentence being appropriate).

In sum, Appellant has failed to show that her case and Kerr are “closely related” or that the sentences are highly disparate. United States v. Anderson, 67 M.J. 703, 705-06 (A.F. Ct. Crim. App. 2009); United States v. Lacy, 50 M.J. 286, 288 (C.A.A.F. 1999). Notably, the military judge in this case expressed no reservation about adjudging a punitive discharge. Appellant’s circumstances simply do not compare to the extreme circumstances at play in Kerr that moved the court to look past the fact that the appellant negotiated for the punitive discharge in that case. Thus, this Court should affirm Appellant’s dismissal.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant’s claim and affirm the finding and sentence in this case.


A  MBLI, Maj, USAFR
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 18 September 2025.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	Reply Brief
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	25 September 2025
<i>Appellant.</i>)	

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

Captain (Capt) Shelene Sawyer, the Appellant, primarily rests on the arguments made in her opening brief, filed on 29 August 2025. Capt Sawyer offers the following in response to the Government’s Answer (Ans.), filed on 18 September 2025.

While an appellant’s “willingness to agree to a plea agreement” may suggest a sentence is not inappropriately severe, Ans. at 7, it is also not dispositive. Ans. at 6-7 (citing *United States v. Avellaneda*, 84 M.J. 656, 663 (N-M. Ct. Crim. App. 2024)). Instead, this Court must conduct an independent review of the entire record. The Government recognizes this Court should conduct its review based on Capt Sawyer’s service history and the nature and seriousness of the offense for which she was convicted. Ans. at 6.

Here, Capt Sawyer was convicted of violating an order not to drink alcohol. R. at 187-88. That is it. The Government’s focus on other alleged misconduct, including previous alcohol-related incidents, Ans. at 8-9, is inapposite. Ultimately, Capt Sawyer served over 100 days in confinement and was dismissed from the service because she drank alcohol on New Year’s Day. A dismissal, which carries with it immense social stigma and the loss of rights, Ans. at 4-5., is an inappropriately severe sentence for this conviction.

The supposed concessions that the Government claims it made to obtain Capt Sawyer's plea of guilty, Ans. at 7, are likewise not significant. The Government points to the plea agreement's prohibition against an adjudged fine, forfeitures, hard labor, and restriction, among others. But it is difficult to see how these concessions justify a dismissal, especially since she also served over 100 days of confinement. While Capt Sawyer certainly received some benefit from the plea agreement, the sentence is nevertheless inappropriately severe, especially considering Capt Sawyer's lengthy and exceptional service.

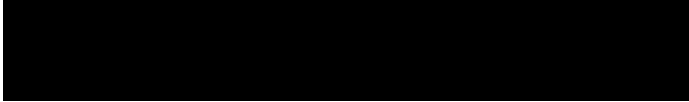
Ultimately, agreeing to a specific sentence is not the end of the inquiry. *United States v. Kerr*, No. 202200140, 2023 CCA LEXIS 434, at *8 n.23 (N-M. Ct. Crim. App. Oct. 17, 2023). In distinguishing *Kerr*, the Government downplays the misconduct; its summary of the facts is misleading. Compare Ans. at 11 (“*Kerr* involved an appellant [who was] convicted of stealing military property.”), with *Kerr*, 2023 CCA LEXIS 434, at *2 (showing that Kerr was convicted of serious larceny, to include stealing explosive flashbangs, gas cannisters, and a fellow Marine's car just before that Marine was set to separate from the military). Capt Sawyer's misconduct—violating an order by drinking alcohol—appears comparatively minor next to the significant larceny in *Kerr*.

Making matters worse is the Government's misstatement of Capt Sawyer's opening brief: “Appellant mistakenly refers to *Kerr* as precedent.” Ans. at 10 (citing Appellant's Opening Brief (App. Br.) at 11). There are three problems with this claim. First, Capt Sawyer never claimed *Kerr* was precedential. See generally App. Br. Second, even if she had, such a statement is accurate. *Precedent*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“Preceding in time or order.”); see *Persuasive Precedent*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“A precedent that is not binding on a court.”). Third, the Government's citation to Capt Sawyer's opening brief is invalid:

it cites to page eleven when the opening brief is only six pages long. *Contrast* Ans. at 10, with App. Br.

For these reasons, and those articulated in Capt Sawyer's opening brief, this Court should disapprove the dismissal as inappropriately severe.

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 25 September 2025.

Respectfully submitted,



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

UNITED STATES)	No. ACM 40670
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Shellene C. SAWYER)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 28 May 2025, a general court-martial composed of a military judge convicted Appellant, in accordance with her pleas and pursuant to a plea agreement, of one specification of willful disobedience of a lawful order by her superior commissioned officer to refrain from consuming alcohol in violation of Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890.¹ The military judge sentenced Appellant to a dismissal, 114 days’ confinement, and a reprimand. The convening authority took no action on the findings or the sentence.

For purposes of this order, the following information comes from the Stipulation of Fact, admitted at trial as Prosecution Exhibit 1:

- Prior to 10 October 2023, Appellant was a patient undergoing alcohol dependency treatment. Also during this time, she was involved in several alcohol-related incidents including being drunk on duty and operating a motor vehicle on base while under the influence of alcohol. Those incidents were handled by nonjudicial punishment, pursuant to Article 15, UCMJ, 10 U.S.C. § 815.
- On 10 October 2023, Appellant’s commander (her superior commissioned officer) issued an order to Appellant to refrain from “operating motor vehicles and not to consume alcohol.”

¹ Appellant plead guilty by exceptions and substitutions to Specification 1 of the Charge, excepting out the words “on divers occasions” and specifying a single occasion of the violation, “on or about 1 January 2024.” Pursuant to the plea agreement, the Government withdrew and dismissed with prejudice Specification 2 of the Charge, which addressed the failure to obey a lawful order by her superior commissioned officer to “refrain from operating any motor vehicle without the express approval of [her superior commissioned officer].”

- On 26 October 2023, Appellant’s commander amended the no-driving portion of the order to allow Appellant to drive to and from her off-base treatment appointments, including her Partial Hospitalization Program (PHP) treatment sessions, Alcoholics Anonymous (AA) meetings, and meetings with her AA sponsor. The portion of the order to refrain from consuming alcohol remained in effect.
- From 27 November 2023 to 29 November 2023, Appellant’s alternate duty location was her off-base alcohol-dependency treatment center. During this time, Appellant failed to go to this alternate duty location. The next day, and as a result of Appellant’s husband notifying Appellant’s leadership that she had been drinking since 28 November 2023, Appellant was escorted to the treatment facility for rehabilitation. There, Appellant “underwent detoxification for four days” and “was released from the detoxification facility on 2 December 2023.”
- On 1 December 2023, Appellant’s commander rescinded the 26 October 2023 order that removed the “no driving” provision and reissued a no-driving and no-drinking order. Appellant’s commander “reinstated the orders to the initial scope of the 10 October 2023 orders.” (Emphasis added).

On or about 1 January 2024 Appellant consumed alcohol which was the subject of her guilty plea. On 23 February 2024, the Government preferred one charge and two specifications of willful disobedience of a lawful order of a superior commissioned officer. Specification 1 of the Charge alleged disobedience of the no-drinking order on divers occasions, and Specification 2 of the Charge alleged disobedience of the no-driving order on one occasion. On 29 March 2024, the Charge and two specifications were referred to trial by general court martial.

On 12 April 2024, trial defense counsel filed a motion to dismiss the Charge and two specifications challenging the legality of the no-drinking and no-driving “commands.” The Government opposed the motion. The military judge convened an Article 39(a), UCMJ, 10 U.S.C. § 839, session on 2 May 2024 to, *inter alia*, take up the Defense’s motion to dismiss. The military judge gave an initial verbal ruling from the bench denying the defense motion to dismiss by finding “the order” lawful, and on the same day reduced his ruling to writing. The ruling indicated that Appellant’s commander

issued *the order* as a tool of last resort. He did not intend to punish [Appellant] by issuing *the order* nor did he hold any personal animosity towards [Appellant]. He was disappointed she was unable to conform her behavior to basic levels of officership and

issued *the order* as “One other thing I can do, a stop-gap step, something to make her think about when making choices,” as one “last stand,” “one more layer of barrier,” or words to that effect, that he sincerely hoped would convince [Appellant] to make better personal and professional choices.

(Emphasis added). After his analysis of “the Order,” the military judge concluded “*the Order* is lawful.” (Emphasis added). Throughout his ruling, the military judge addressed *the order*, but did not specifically state in his facts or analysis whether his ruling applied to both the “no driving” or “no alcohol” aspect of the order, or only one or the other. His ruling also did not address whether his determination as to lawfulness of “the Order” was related to those aspects combined or whether each aspect was lawful on its own.

On 8 May 2024, Appellant submitted an offer for a plea agreement which, if accepted, would, *inter alia*, dismiss with prejudice Specification 2 of the Charge in exchange for a plea by exceptions and substitutions to Specification 1 of the Charge. The convening authority approved and accepted the plea agreement on 13 May 2024.

On 28 May 2024, during Appellant’s guilty plea inquiry, the following exchange occurred between the military judge and Appellant relating to the element of lawfulness:

MJ: Even though the court made the lawful determination that as a matter of law *the order* was lawful, other than that, why do you believe *the order* was lawful?

[Appellant]: The order to not consume alcohol, it was presented to me by my group commander, a superior commissioned officer. I reported [to] him in my blues. It was clear. It was clear, concise. I understood what it meant. I had a full understanding. I didn’t have any questions. And I signed it in agreeing.

MJ: I know [the commander] testified at a hearing earlier in this matter and explained his reasoning for why he thought it important to issue *the order*. Do you recall that testimony?

[Appellant]: Not verbatim, but I do recall him test – yeah. Yes, sir.

MJ: Do you recall [the commander] testified that *it* was important not just for your protect [sic] – his belief that *it* would protect you, but also that *it* would protect members of the public and also enhance essentially good order and discipline within the unit?

[Appellant]: Yes, sir.

MJ: Do you have any doubt that [the commander] was sincere as to his reasons why he was ordering you to do what he required you to do?

[Appellant]: I have no doubt.

MJ: Would you agree that *the order* was authorized under those circumstances?

[Appellant]: Yes, sir.

MJ: Do you agree you had a duty to obey *it*?

[Appellant]: Yes, sir.

MJ: Do you have an opportunity to read the court's ruling, which is attached as the last exhibit within the stipulation of fact attachments, as to why *the order* was lawful?

[Appellant]: Yes, sir.

MJ: Understanding that you and your counsel would have preferred that the court had ruled in a different way, do you at least understand the reasoning the court used in determining that *that order* was lawful?

[Appellant]: Yes, sir.

(Emphasis added).

The military judge then pivoted to ask some questions related to Appellant's alcohol dependency, duress, and "voluntariness." Eventually the military judge accepted Appellant's plea, and the Government withdrew and dismissed with prejudice Specification 2 of the Charge.

On 29 August 2025, counsel for Appellant submitted the record for review by this court with one assignment of error, which we have reworded as to whether Appellant's sentence is inappropriately severe.

This court specifies the following additional issues for briefing in the above-captioned case:

I.

WHETHER THE ORDER FOR APPELLANT "TO REFRAIN FROM CONSUMING ALCOHOL," OR WORDS TO THAT EFFECT, ISSUED WHILE APPELLANT WAS UNDERGOING ALCOHOL-DEPENDENCY TREATMENT, WAS A LAWFUL

ORDER AND IF IT IS DISTINCT FROM THE ORDER TO REFRAIN FROM OPERATING A MOTOR VEHICLE?²

II.

WHETHER APPELLANT PRESERVED, WAIVED, OR FORFEITED THE FIRST SPECIFIED ISSUE?

III.

WHETHER APPELLANT'S PLEA TO VIOLATING THE ORDER "TO REFRAIN FROM CONSUMING ALCOHOL," OR WORDS TO THAT EFFECT, WAS PROVIDENT?³

Accordingly, it is by the court on this 7th day of October, 2025,

ORDERED:

Appellant and Appellee shall file briefs on the specified issues with this

² A brief on this issue should include, but is not limited to, discussion on whether the order and underlying command rationale for Appellant's no-drinking order were severable from the accompanying no-driving order; whether the lawfulness of the no-drinking order was altered when it was severed from the accompanying excepted no-driving order; the effect, if any, of the dismissal of Specification 2 with prejudice on this analysis; a discussion about the relevance of Appellant's alcohol dependency, treatment, and timing of the order not to drink alcohol; and discussion, *inter alia*, of *United States v. Stewart*, 33 M.J. 519 (A.F.C.M.R. 1991); *United States v. Roach*, 26 M.J. 859 (C.G.C.M.R. 1988), *aff'd*, 29 M.J. 33 (C.M.A. 1989); and *United States v. Wilson*, 12 U.S.C.M.A. 165, 30 C.M.R. 165 (1961).

³ A brief on this issue should address, but is not limited to, a discussion on the plea inquiry into the lawfulness of "the Order" that relied in part on a prior ruling from the military judge (Appellate Exhibit XX) who jointly considered "the Order" for Appellant to refrain from both consuming alcohol and operating a motor vehicle when determining lawfulness; the effect on the providence and voluntariness of the plea based on any reliance on the prior combined ruling and the subsequently dismissed with prejudice no-driving order; and a discussion about Appellant's alcohol dependency diagnosis vis-à-vis Appellant's mental health as it relates to any associated defenses and the adequacy of the military judge's inquiry into such potential defenses and Appellant's mental health status.

court. Both briefs are due not later than **7 November 2025**. No reply briefs will be permitted without leave from the court.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee,</i>	)	APPELLATE REVIEW AND
	)	MOTION TO ATTACH
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER,)	
United States Air Force,	)	7 November 2025
<i>Appellant.</i>)	

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

Pursuant to Rule 16 of this Honorable Court’s Rules of Practice and Procedure, and Rule for Courts-Martial (R.C.M.) 1115, Appellant hereby moves to withdraw her case from appellate review. Appellant has fully consulted with Maj Trevor N. Ward, her appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise to withdraw her case from appellate review.

Further, pursuant to Rules 23(b) and 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel asks this Court to attach the two-page document appended to this pleading to Appellant’s Record of Trial. The appended document is a Department of Defense Form 2330, signed by Appellant and undersigned counsel. The appended document is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court’s Rules of Practice and Procedure.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the above captioned motion to withdraw from appellate review and likewise grant her request to attach matters to the record.

Respectfully submitted,

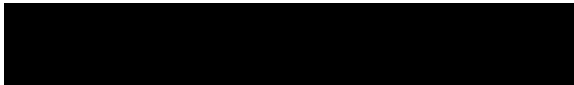


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CERTIFICATE OF FILING AND SERVICE

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 7 November 2025.

Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' BRIEF IN
<i>Appellee,</i>	)	RESPONSE TO SPECIFIED ISSUES
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER, USAF,)	
<i>Appellant.</i>)	

BRIEF IN RESPONSE TO SPECIFIED ISSUES

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' BRIEF IN
<i>Appellee,</i>	)	RESPONSE TO SPECIFIED ISSUES
)	
v.	)	Before Panel No. 1
)	
Captain (O-3)	)	No. ACM 40670
SHELLENE C. SAWYER, USAF,)	
<i>Appellant.</i>)	

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

SPECIFIED ISSUES

I.

WHETHER THE ORDER FOR APPELLANT "TO REFRAIN FROM CONSUMING ALCOHOL," OR WORDS TO THAT EFFECT, ISSUED WHILE APPELLANT WAS UNDERGOING ALCOHOL-DEPENDENCY TREATMENT, WAS A LAWFUL ORDER AND IF IT IS DISTINCT FROM THE ORDER TO REFRAIN FROM OPERATING A MOTOR VEHICLE?

II.

WHETHER APPELLANT PRESERVED, WAIVED, OR FORFEITED THE FIRST SPECIFIED ISSUE?

III.

WHETHER APPELLANT'S PLEA TO VIOLATING THE ORDER "TO REFRAIN FROM CONSUMING ALCOHOL," OR WORDS TO THAT EFFECT, WAS PROVIDENT?

STATEMENT OF CASE

On 28 May 2024, pursuant to a plea agreement, Appellant entered an *unconditional* guilty plea before a military judge sitting at a general court-martial to Specification 1 of the sole Charge in this case for willfully disobeying a command to refrain from consuming alcohol on or

about 1 January 2024.¹ (R. at 171.) As part of and pursuant to the plea agreement, the government withdrew and dismissed with prejudice Specification 2 of the Charge, which alleged Appellant willfully disobeyed a command to refrain from operating a motor vehicle. (App. Ex. XXIV.)

After finding Appellant guilty pursuant to her unconditional plea, the military judge sentenced Appellant to 114 days confinement (the same amount of days she had served in pretrial confinement) and a dismissal. (R. at 222, 245.)

On 29 August 2025, Appellant submitted a brief to this Court with one claimed error involving the severity of her sentence. The brief raised no issues related to the lawfulness of the command given to refrain from consuming alcohol or the providency of Appellant's plea.

On 7 October 2025, this Court directed the parties to provide supplemental briefing on three specified issues no later than 7 November 2025.

STATEMENT OF FACTS

On 12 April 2024, Appellant moved the trial court to dismiss the sole Charge in this case, along with its two specifications, for "failure to state an offense as the alleged commands were unlawful." (App. Ex. IV.) On 2 May 2024, the military judge heard testimony and argument related to the motion, including testimony from Col KL, Appellant's commander and the person who gave the disputed commands to Appellant. (R. at 16-50.) The military judge denied Appellant's motion in an 11-page ruling which will be discussed in-depth below. (App. Ex. XX.) Thereafter, Appellant submitted her plea agreement.

¹ The original specification alleged that Appellant violated the command on divers occasions between on or about 1 December 2023 and on or about 4 February 2024.

- ***Military Judge's Findings of Fact***²

Within his ruling, the military judge found as fact the following:

- On 18 April 2023, Appellant appeared intoxicated while on duty and fell asleep at her desk; the next day, 19 April 2024, she failed to show up for duty; (App. Ex. XX at 1.)
- In early 2023, an investigation disclosed evidence that Appellant was engaged in a relationship with an enlisted member; (Id.)
- On 8 May 2023, Appellant self-referred to the ADAPT program, but failed to proceed in that program after presenting to work intoxicated at a later date; (Id.)
- On 21 June 2023, Appellant received a Letter of Reprimand for her conduct on 18-19 April 2023, as well as for fraternization; (Id.)
- On 1 August 2023, Appellant's coworkers reported her to authorities for being drunk on duty and having an alcoholic beverage in a Powerade bottle on her desk; her blood-alcohol content showed a level of .236%; (Id. at 2.)
- On 2 August 2023, Appellant was admitted to the New Dawn Residential alcohol treatment program, and remained there until 21 August 2023; (Id. at 2.)
- On 23 August 2023, Appellant was driving off the installation enroute to another alcohol treatment facility when she ran into another vehicle and then drove off without stopping; a California Highway patrolman spoke with Appellant on the phone and noted her speech was thick and slurred; her blood-alcohol content, tested at the facility, showed a level of .35%; (Id.)
- Due to her relapse, Appellant was readmitted to New Dawn, where she stayed until 25 September 2023; after at least 12 October 2023, Appellant continued to receive care or was offered to receive care through a program run by New Dawn and various other Alcoholics Anonymous groups; (Id.)

² As Appellant raised no issue related to the military judge's ruling on this matter, the military judge's findings of fact are not disputed.

- On 2 October 2023, Appellant was punished nonjudicially for the 1 August 2023 drunk on duty incident; (Id.)
- The same day, 2 October 2023, Appellant was seen driving her vehicle on base swerving, striking multiple road signs, and partially stopping traffic by stopping on a base road; empty and nearly empty bottles of vodka were found in Appellant’s car; a later breath sample showed her blood-alcohol content, at a level of .248%; (Id.)
- On 10 October 2023, Col KL issued Appellant an “Order Not to Operate Motor Vehicles or Consume Alcohol;”³ the rationale for the order stated as follows:

During the incidents of misconduct, you had either recently completed inpatient treatment for alcohol abuse or were actively in outpatient treatment for alcohol abuse. The fact that the[s]e incidents occurred either contemporaneously with or shortly after this treatment suggests that neither the laws which prohibit your misconduct nor the treatment designed to address it is sufficient to prevent you from engaging in this misconduct.

Your alcohol-related misconduct has placed you, other members of this base, and members of the general public in danger of harm. Alcohol abuse can have serious health effects, which negatively impacts your readiness and ability to complete Air Force missions for which you are responsible. Moreover, operating a motor vehicle while intoxicated not only presents the danger of injuring government property, as it did in the incident that occurred on 2 October 2023, but it also places you and members of the

³ In his ruling, the military judge referred to the overall 10 October 2023 document, which included the subject line “Order Not to Operate Motor Vehicles or Consume Alcohol,” as the “Order.” (See Id. at 2-3, para. 10, 11, 12.) However, as detailed below, the military judge found this “Order” document contained “two orders.” (Id. at 3.) The military judge then, throughout the ruling, made reference to the “Order” as well as the “orders.” From the context of the military judge’s use of these terms, it is clear the military judge used the term “Order” (with a capitalized “O”) to refer to the 10 October 2023 document itself, and used the terms “order” or “orders” (small-cased “O”) to refer to the two individual orders contained within the overall Order document.

public in danger of physical harm resulting from a vehicle accident, as evidenced by both the 23 August 2023 and 2 October 2023 incidents. Importantly these incidents occurred both on and off Beale AFB.

(Id. at 2-3, *see also* Pros. Ex. 2 at 1-2.)

The military judge found there were “two orders within this document: (A) **‘You will not operate any motor vehicle, personal or otherwise, without prior approval from me.** This includes a motor vehicle on and off Beale AFB and during and outside your normal duty hours.’

(B) **‘You will not consume any alcohol. This includes the consumption of alcohol on and off Beale AFB and during and outside your normal duty hours.’**”⁴ (App. Ex. XX at 3.)

(emphasis in original.) The military judge continued, “The orders were to ‘remain in effect until the final disposition of the alcohol-related misconduct for which the Air Force currently has jurisdiction, unless otherwise modified or rescinded.’” (Id.) The military just also found that the “Order provided a mechanism for exceptions and relief, but that Appellant and her counsel only asked for one modification, which was granted until Appellant committed additional alcohol-related misconduct. (Id.)

The military judge further found that the Order document was “a tool of last resort” and not intended to punish Appellant.⁵ (Id.) The military judge found as fact, “Col [KL] during the

⁴ Both the trial counsel and Appellant’s trial defense counsel agreed with the military judge during the motion argument that the Order contained two separate orders. At one point, the military judge told Appellant’s counsel, “There are two orders here. One is not to drink at all, and one is not to drive at all.” (R. at 54.) Appellant’s counsel responded, “Yes, Your Honor.” (Id.) Later, the military judge said to the trial counsel, “It is really two separate orders.” (R. at 60.) Trial counsel responded, “Yes, Your Honor.” (Id.)

⁵ This Court’s 7 October 2025 Order quotes a portion of the military judge’s ruling on this point, but does not use the same capitalization of the word “Order” as the military judge did in his ruling. In a block quote, this Court’s Order says Col KL “issued *the order* as a tool of last resort. He did not intend to punish [Appellant] by issuing *the order* nor did he hold any personal

Article 39(a) session in this matter, reiterated at length (and persuasively) the rationale for the underlying orders, consistent with the rationale detailed in the written Order.”⁶ (Id.) The military judge found that Col KL “noted that the unit had suffered under [Appellant’s] leadership . . . , which [Col KL] attributed to [Appellant’s] challenges with alcohol.” (Id.)

The military judge also made the following findings of fact:

- On 26 October 2023, Col KL amended the Order to allow Appellant to drive to certain alcohol treatment sessions and meetings, but then had to rescind it on 1 December 2023 because Appellant continued to use alcohol; (App. Ex. XX at 4.)
- During this November 2023 timeframe when the Order was amended, Appellant’s alternate duty location was an alcohol treatment facility and Appellant’s unit worked diligently to ensure Appellant attended classes; however, Appellant did not attend classes from 27-30 November due to her drinking alcohol; as a result, members of Appellant’s unit took her to an extended in-patient treatment center; (Id.)
- On 1 January 2024, Appellant arrived at the Beale Air Force Base gate attempting to have someone drive her onto the installation; when the driver had no identification, Appellant chose to walk home; however, Appellant left her military identification card (CAC) at the gate; when security forces tried to return it to her at her home, Appellant was found intoxicated and attempted to ingest pills; medical testing revealed Appellant had a blood-alcohol content of .40%; (Id.)

animosity towards [Appellant]. He was disappointed she was unable to conform her behavior to basic levels of officership and issued *the order . . .*” (See AFCCA Order at 2-3.) (emphasis in this Court’s Order.) However, in the military judge’s ruling, the military judge used the capitalized word “Order” in each of those three instances. As shown in footnote 3, there is a distinction between the two as the military judge here was referring to the overall “Order” document as a whole. It is not an indication that the military judge believed the Order document only contained one order within it.

⁶ In reference to the prior footnote, this sentence highlights how the military judge used the words “orders” and “Order” to differentiate the underlying “orders” from the overall “Order” document.

- On 3 February 2024, a car driven by Appellant crashed into two fences on an off-base private property; Appellant appeared visibly intoxicated and had a blood-alcohol content, in two separate tests, of .22% and .21%; (Id.)
- On 4 February 2024, Col KL placed Appellant into pretrial confinement. (Id.)
- ***Col KL's Testimony***

Col KL, Appellant's group commander, stated that the court-martial charges in this case "stemming from failure to obey *orders* given to [Appellant] by myself." (R. at 17.) (emphasis added.) These orders were contained within a single document provided to Appellant on 10 October 2023. Col KL said the 10 October 2023 document had "two provisions" – "cease and desist from all drinking activity as well as driving on and off base." (R. at 18.) Col KL noted that he later allowed off-base driving but that subsequent actions by Appellant required the reinstated of the original order of no driving at all. (Id.)

Col KL discussed the mission impacts of Appellant's misconduct. Col KL stated that when he became the commander in June 2023, Appellant had already gone into the ADAPT program. (R. at 34.) Regarding Appellant underperforming in her duties, Col KL said that the prior commander had told him that Appellant could not be trusted "to be involved in laboratory medicine," and that the unit had "gotten help to the Air Force seeking manning assist to fill back that position." (Id.) Col KL said that a College of American Pathologist inspection verified that there was a time period when Appellant was the laboratory officer that "the materials and processes in the lab had declined" to a point where "the inspector was fairly confident if we continued on that trend that we would not have been unrestrictedly accredited." (R. at 35.)

Still, Col KL was hopeful for Appellant's recovery, stating, "I thought ADAPT had gone well, that we were on a way towards rehabilitation, that we were going to move forward in a

different direction than my predecessor had planned. I was very hopeful.” (R. at 36.) However, the 1 August (Powerade bottle) and 23 August incidents then occurred. (R. at 36-37.) Then, after getting out of further treatment in August and September, Appellant, within a week, had the 2 October on-base DUI. (R. at 38.)

Based on these events, Col KL ordered Appellant not to drink and not to drive. (R. at 38.) Col KL agreed there were a number of purposes behind these orders. (Id.) For the order not to drive, Col KL said the “the purpose of that order was to protect the base, the mission, the people on the base. I felt that I had a moral obligation to protect the same measure of the public outside the gate.” (Id.) Col KL agreed his actions were based on concerns that Appellant’s operation of a vehicle while intoxicated placed her and the public in danger of physical harm. (R. at 19.)

For the no drinking order, Col KL said explained:

I would like to also try to establish one more level of consideration in her mind with the drinking order to say is there one other thing that I can do to make a stopgap measure to say before you pick up that next drink, if she knows she’s violating an order, that it would have to be something that she intentionally did to say, yes, I am not supposed to do this. I have been ordered not to do this, but I am choosing to do this.

(R. at 39.) Col KL also stated, “To add to that her decision to drink on duty caused me very concern with our mission as well as the property,” adding that the “issues that we had at the lab probably related to alcohol, the lack of QA to potentially lose our accreditation in the lab for her performance.” (R. at 39.)

Col KL also stated that he felt alternatives to the orders had been exhausted, stating as follows:

Alternatively, we have tried the UCMJ process, LORs, Article 15s, and I know that we had initially considered a confinement to base as a potential outlet. However, my concern when we were involved in that discussion was I didn't want to limit her treatment avenues available to her because New Dawn, had the alcohol anonymous group going on. There was intensive out-patient. I wanted to just recognize that there was some therapeutic benefit for the human touch to be person to person. So believed the confinement to base would have been against the whole rationale that she was going into treatment to try to prevent this. So that was considered, but I don't believe that was a viable option, so that's why we went with what we did.

(R. at 41.) Col KL also noted that Appellant had been "offered long-term residential treatment" at facilities in Texas and Arizona, but that Appellant declined. (R. at 42.)

Col KL also noted the driving orders were amended to allow Appellant to go to treatment but that this amended had to be revoked on 1 December 2023 when Appellant violated the no drinking portion of the order. (R. at 43.) Col KL said the stated objectives of his orders was "[s]obriety and hopefully a return to excellent performance." (Id.) Col KL said, "No, sir," when asked if the orders were intended to punish Appellant in any way. (R. at 46.)

- ***Military Judge's Analysis and Ruling***

The military judge ruled that the orders given by Col KL were lawful. (App. Ex. XX at 8.) Citing United States v. New, 55 M.J. 95, 106 (C.A.A.F. 2001), the military judge noted that a lawful order must include the following essential attributes: (1) issuance by competent authority - a person authorized by applicable law to give such an order; (2) communication of words that express a specific mandate to do or not do a specific act; and (3) relationship of the mandate to a military duty. (Id. at 5.)

The military judge first held that Col KL was a competent authority as he was a commissioned officer and Appellant's group commander. (Id. at 8.)

The military judge also held that “the Order reflects a ‘communication of words that express a specific mandate to do or not do a specific act.’” (Id.) The military judge held that the Order⁷ contained two such mandates: (1) to refrain from operating a motor vehicle; and (2) to refrain from consuming any alcohol. (Id.) The military judge also highlighted that the Order was “time-limited to a specific duration,” and was “not in practice going to be infinite.” (Id.)

Finally, the military judge held the third attribute – relationship to a military duty – was also met, stating as follows:

Here, [Appellant] and the Court need not guess as to the asserted basis of the relationship of this Order to those military matters--Col [KL] detailed it in his written Order (and reiterated it and other matters during his testimony during the Article 39(a) session in this matter). *In that Order as to alcohol use*, Col [KL] cited danger of harm to [Appellant], military members, and the general public and impact on Accused's readiness and completion of Air Force missions; *as to driving*, Col [KL] cited danger of injury to government property as well as the [Appellant] herself, members of the military, and members of the general public. Col [KL] certainly was concerned that if [Appellant] was going to drink there was also a high probability that she would also drive, but drinking and driving was but one of many expressed rationales for issuing the No-Drink/No-Drive order here.

(Id. at 8-9.) (emphasis added.)

Citing to a host of cases (some of which are discussed below), the military judge held that “Protection of the general public and her fellow service members from [Appellant] was a legitimate military purpose of the orders here.” (App. Ex. XX at 9.) Based on Appellant’s past conduct related to alcohol, the military judge held that Col KL “did not have to guess where

⁷ Here again, the military judge used the capitalized “Order” to refer to the document which contained the two “orders” given to Appellant – one, not to drive; and two, not to drink alcohol.

there was a reasonable belief” that Appellant would engage in conduct that “placed herself, members of the public, and fellow servicemembers in danger.” (Id.)

The military judge also noted that Appellant “had already demonstrated a penchant for making choices in her personal capacity that negatively impacted her professional duties,” and that her “choices to drink had already negatively impacted her ability to be ready to and to complete her Air Force missions.” (Id. at 10.)

The military judge concluded that “there was a legally sufficient nexus between Col [KL’s] Order and a military duty, namely maintaining the discipline and morale of the unit (through Accused's readiness to complete her Air Force duties). and protecting [Appellant], her fellow servicemembers, members of the general public, and government property from death, injury, or damage.” (Id.) The military judge then acknowledged that “no-drink (and no-drive) orders are frowned upon in a general sense,”⁸ but that Appellant’s actions “left command little choice but to issue the same.” (Id.)

The military judge continued:

It is hard to contemplate what other tools command had to impress upon [Appellant] the importance of refraining from *those actions that threatened discipline and morale of the unit and damage to everyone who potentially would come into contact with a drunk [Appellant]*. Col [KL] articulated a justifiable military-duty rationale for giving Accused the Order; the Order was reasonably necessary to safeguard and protect the morale, discipline, and usefulness of the members of a command; the Order was directly connected with the maintenance of good order in the service; and the Order was necessary to protect [Appellant], her fellow service members, and members of the general public. The substance of Col [KL’s] Order as to what it directed [Appellant] to refrain from doing

⁸ In the law section of his ruling, the military judge quoted United States v. Wilson, 30 C.M.R. 165, 166-67 (C.M.A. 1961), which held that orders not to drink generally have been considered “so broadly restrictive of a private right of an individual” as to be “arbitrary and illegal.” (App. Ex. XX at 6.)

was sufficiently narrow in the context of [Appellant's] past actions. The Order is lawful.

(Id.) (emphasis added.)

- ***Appellant's Guilty Plea Inquiry***

During her unconditional guilty plea, Appellant stated:

On 10 October 2023, after a number of alcohol related incidents, my group commander, Colonel [KL], issued me *an order to not drink alcohol*. Additionally, Colonel [KL] gave me *an order to not operate a vehicle*. I signed ***the orders*** and was provided a copy to keep for my records.

(R. at 186.) Appellant also admitted that two weeks later, Col KL amended the order involving her driving, which “allowed me to drive to my treatments and AA meetings.” (R. at 187.)

Appellant then said she was “grateful for the support” she received and “the help that Col [KL] was allowing to give me by providing this relief.” (Id.)

Appellant noted that from “1 December 2023 through the end of the year, I had no issues.” (Id.) Appellant then explained what occurred on 1 January 2024:

On 1 January 2024, I made a terrible decision. To celebrate the new year, I wanted to have a single celebratory drink, a tradition that most people engage in. I knew that the order to not drink was in effect, but I thought a single drink would not hurt anything. I was wrong. Knowing the order from Colonel [KL] was in effect, I should not have had even one drink. But I still made the choice.

(R. at 188.)

Appellant then admitted that Col KL gave her a lawful order and command to not consume alcohol on 10 October 2023. (R. at 188.) Appellant also admitted that the order was lawful, stating, “lawfulness of the order is an issue of law to be determined by the court. This court has previously determined the order to not consume alcohol was lawful.” (R. at 189.)

Appellant also admitted that Col KL was her superior commissioned officer and that she knew Col KL was her superior commissioned officer. (Id.)

Finally, Appellant admitted that she “willfully disobeyed the lawful command,” stating, “I willfully consumed alcohol. I was not forced, coerced, manipulated, or otherwise tricked into consuming alcohol against my will.” (R. at 189-90.) Even though her medical condition made her overindulge once she started drinking, Appellant said, “the initial drink was completely within my control,” and that the “decision to consume alcohol was mine alone.” (R. at 190.)

During her conversation with the military judge, Appellant stated, “[Col KL] *ordered me* to not consume alcohol on duty, off duty, as in on base, off base, so zero consumption of alcohol. I was *also ordered* to not operate a vehicle.” (R. at 194.) (emphasis added.) The colloquy continued:

MJ: Would you agree that the language of *the orders* were plain and concise as to your responsibilities?

Appellant: Yes, sir.

MJ: Did you ever seek clarification when handed *the orders* from Colonel [KL] about what your responsibilities were?

Appellant: No, sir.

(Id.) (emphasis added.)

As to the lawfulness of the order, the military judge and Appellant had the following exchange regarding the order not to consume alcohol:

MJ: Even though the court made the lawful determination that as a matter of law the order was lawful, other than that, why do you believe the order was lawful?

Appellant: The order to not consume alcohol, it was presented to me by my group commander, a superior commissioned officer. I reported [to] him in my blues. It was clear. It was clear, concise. I

understood what it meant. I had a full understanding. I didn't have any questions. And I signed it in agreeing.

MJ: I know Colonel [KL] testified at a hearing earlier in this matter and explained his reasoning for why he thought it important to issue the order. Do you recall that testimony?

Appellant: Not verbatim, but I do recall him test – yeah. Yes, sir.

MJ: Do you recall Colonel [KL] testified that it was important not just for your protect – his belief that it would protect you, but also that it would protect members of the public and also enhance essentially good order and discipline within the unit?

Appellant: Yes, sir.

MJ: Do you have any doubt that Colonel [KL] was sincere as to his reasons why he was ordering you to do what he required you to do?

Appellant: I have no doubt.

MJ: Would you agree that the order was authorized under those circumstances?

Appellant: Yes, sir.

(R. at 195.) Appellant also stated that she understood the military's ruling on the order being lawful. (R. at 196.)

The military judge then addressed the defenses of duress and voluntariness. (Id.) Both the Government and Appellant's trial defense counsel agreed that an inquiry into the affirmative defense of duress was not appropriate. (Id.)

As to voluntariness, the military judge asked Appellant if she was under the influence of alcohol when Col KL "gave you each of *these orders*." (Id.) (emphasis added.) Appellant replied, "No, sir." (Id.) Appellant and the military judge then had the following exchange:

MJ: When – sort of a timing issue, which I think is fairly obvious, but, would you agree that the order was not for you to refrain from

getting intoxicated, but the order was for you to refrain from drinking at all?

Appellant: Correct, sir.

MJ: And would you agree that the first sip of alcohol that you took would violate that order?

Appellant: Yes, sir.

MJ: And when you took that first sip of alcohol on 1 January 2024, were you conscious of the fact that that action violated the order?

Appellant: Yes, sir.

MJ: Could you have refrained from drinking alcohol if you wanted to at that point?

Appellant: Yes, sir.

MJ: Is it your – is it that you want the court to understand that once you started drinking, once you had already violated the order, your ability to stop drinking was affected by your condition?

Appellant: That's correct, sir.

MJ: But the initial decision as to drink wasn't. Would that be a correct statement?

Appellant: Yes, sir.

MJ: Nothing was impacting or affecting your ability to make a conscious decision to violate that order on 1 January 2024. Is that correct?

Appellant: Correct, sir.

(R. at 197-98.)

- ***Appellant's Stipulation of Fact***

Appellant's Stipulation of Fact states the following:

- “On 10 October 2023, Colonel [KL] issued [Appellant] a lawful order not to operate motor vehicles *and* not to consume alcohol . . .

[Appellant] acknowledged her receipt of *the orders* on 10 October 2023. Colonel [KL's] *orders* were to remain in effect until the NJPs that [Appellant] received in response to the 1 August 2023 and 2 October 2023 incidents closed out.” (Pros. Ex. 1 at 2.) (emphasis added.)

- “On 26 October 2023, Colonel [KL] amended the *no-driving order* to allow [Appellant] to drive to and from her off-base, treatment appointments, including her Partial Hospitalization Program (PHP) treatment sessions, Alcoholics Anonymous (AA) meetings, and meetings with her AA sponsor.” (Id.) (emphasis added.)
- “On 1 December 2023, following the incidents of the week of 27 November 2023, Colonel [KL] rescinded the 26 October 2023 amendment to the *order not to drive* . . . In reissuing *the no-driving and no-drinking orders*, Colonel [KL] reinstated the *orders* to the initial scope of the 10 October 2023 *orders*.” (Id.) (emphasis added.)
- On 2 May 2024, Military Judge, Colonel [BT], presiding over a bifurcated motions hearing in this case, ruled that Colonel [KL's] *orders* that [Appellant] refrain from operating a motor vehicle *and* from consuming alcohol were lawful *orders*.” (Id. at 3.) (emphasis added.)
- “On 10 October 2023, [Appellant] received a lawful command from Colonel [KL] . . . to refrain from consuming alcohol *as well as* a lawful command to refrain from operating motor vehicles. That same day, [Appellant] acknowledged receipt of Colonel [KL's] *orders* not to consume alcohol and not to drive.” (Id.) (emphasis added.)
- “On 26 October 2023, Colonel [KL] issued an amendment to *the no-driving order*. On 1 December 2023, Colonel [KL] revoked his amendment to *the no-driving order*, thereby reissuing *both the no-driving and no-drinking orders* in their original scope. On 3 December 2023, [Appellant] acknowledged receipt of the new *orders*. As of 1 January 2024, *the no-drinking order* was still in full effect.” (Id.) (emphasis added.)
- Among other things, [Appellant] has knowingly agreed to waive substantive rights, including waiving the right to travel witnesses in her defense, *waiving all waivable motions*, and waiving her right to a trial by a panel of members.” (Id.) (emphasis added.)

- *Appellant's Plea Agreement and Inquiry Regarding the Plea Agreement*

Appellant's plea agreement contained no provision that it was conditional on the preservation of her Failure to State an Offense motion. (*See* App. Ex. XXIV.) Appellant's plea agreement states, in part, the following:

I waive all waivable motions as authorized by the Rules for Courts-Martial (R.C.M.). In accordance with R.C.M. 705(c)(1)(B), however, I understand that I am not waiving the right to counsel, the right to due process, the right to challenge the jurisdiction of the court-martial, the right to a speedy trial, the right to complete sentencing proceedings, and complete and effective exercise of post-trial and appellate rights.

(Id. at 1.)

The military judge, Appellant, and Appellant's trial defense counsel had the following exchange regarding this provision of the plea agreement:

MJ: Paragraph 2(c), you agree to waive all motions that are waivable. More discussion on this one. Defense Counsel, *besides the motions we resolved at the last session of the court, were there any other motions that you are not making or are waiving pursuant to this provision of the plea agreement?*

DC: Yes, Your Honor.

MJ: What would those – what may have been —

DC: Those two motions would have been for unreasonable multiplication of charges and a motion to dismiss for improper referral.

MJ: And the nature of the improper referral would have been what?

DC: A violation of the AFI pertaining to this type of situation in which civilians are prosecuting the underlying offense separately.

MJ: Ah, got it, okay. And so double jeopardy, separate severance sort of argument?

DC: Yes, Your Honor.

MJ: Alright, [Appellant], I advise you that certain motions are waived or given up if your defense counsel does not make the motion prior to entry of your plea. Some motions, however, such as a motion to dismiss for lack of jurisdiction can never be given up. Do you understand that this term of your plea agreement means that you give up the right to make any other motion which by law is given up when you plead guilty?

Appellant: Yes, sir.

MJ: When you elected to give up the right to litigate motions, did your defense counsel explain this term of your agreement and the consequences to you?

Appellant: Yes, sir.

MJ: Did anyone force you to enter into this term of your agreements?

Appellant: No, sir.

...

MJ: Knowing all what your defense counsel and I have told you, do you want to give up making motions you can waive by law in order to get the benefit of your plea agreement?

Appellant: Yes, sir.

MJ: Do you have any questions about this provision of your plea agreement?

Appellant: No, sir.

(R. at 203-04, 207.)

- ***Appellant's Concessions in Her Initial Brief to this Court***

Within her initial brief to this Court in which she alleged the very sentence she agreed to in her plea agreement was inappropriate, Appellant made the following concessions:

- “[Appellant] was ordered not to drink by her commander.” (App. Br. at 5.)
- “And, by December 2023, [Appellant] was sober.” (Id.)

ARGUMENT

I.

APPELLANT UNCONDITIONALLY WAIVED THIS ISSUE AT TRIAL; THAT ASIDE, THE MILITARY JUDGE DID NOT ERR IN FINDING COL KL'S COMMAND TO REFRAIN FROM CONSUMING ALCOHOL LAWFUL; FURTHER, COL KL'S TWO ORDERS WERE DISTINCT.

Standard of Review

As detailed below, Appellant unconditionally waived this issue at trial. Had Appellant not unconditionally waived this issue, this Court considers the legality of an order de novo.

United States v. Deisher, 61 M.J. 313, 317 (C.A.A.F. 2005).

Law

The critical attributes of a lawful order include:

- (1) issuance by competent authority—a person authorized by applicable law to give such an order;
- (2) communication of words that express a specific mandate to do or not do a specific act; and
- (3) relationship of the mandate to a military duty.

Id.

Orders are presumed to be lawful, and an appellant bears the burden of demonstrating otherwise. New, 55 M.J. at 106. Nevertheless, an order purporting to regulate personal affairs is not lawful unless it has a military purpose. United States v. Padgett, 48 M.J. 273, 276 (C.A.A.F. 1998); *see Deisher*, 61 M.J. at 317 (“The essential attributes of a lawful order include . . . [the] relationship of the mandate to a military duty.”)

An evaluation of the lawfulness of an order includes consideration of the criteria from the Manual for Courts-Martial, (2019 ed.) (MCM), pt. IV, ¶ 16.c.(2)(a)(iv), which states as follows:

Relationship to military duty. The order must relate to military duty, which includes all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of members of a command and directly connected with the maintenance of good order in the service. The order may not, without such a valid military purpose, interfere with private rights or personal affairs. However, the dictates of a person's conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order. Disobedience of an order which has for its sole object the attainment of some private end, or which is given for the sole purpose of increasing the penalty for an offense which it is expected the accused may commit, is not punishable under this article.

Military case law related to orders prohibiting the consumption of alcohol has a varied history and centers both on the broad scope of the orders as well as whether the purpose behind the order has a valid relationship and connection to military duty.

In United States v. Wilson, 30 C.M.R. 165 (1961), an appellant was ordered by his squadron commander "not to drink liquor." The appellant confessed to stealing a tape recorder while under the influence of alcohol, and was then restricted to his place of duty and the barracks. The squadron commander testified that the order not to drink was given "for his own good. . . for his protection and the best interests of the service," and to "prevent something similar . . . happening again." The CMA stated, "The commander testified the order was specifically intended to 'prevent' and 'protect' the accused from again becoming involved in some misdeed while under the influence of alcohol." Id. at 166. However, no military connection was established. The court found the order unlawful, holding that "[i]n the absence

of circumstances tending to show its connection to military needs, an order which is so broadly restrictive of a private right of an individual is arbitrary and illegal.” Id. at 166, 167.

Twenty-seven years later, our sister Court addressed the issue of no-alcohol orders in United States v. Roach, 26 M.J. 859 (C.G.C.M.R. 1988), *aff’d*, 29 M.J. 33 (C.M.A. 1989). There, an appellant who admittedly suffered from alcohol abuse, was given an order not to consume alcoholic beverages while on a liberty pass in Key West, Florida. The United States Coast Guard Court of Military Review (CGCMR) reversed the appellant’s guilty plea to the charge of violating the order and highlighted Wilson, noting that the purpose of the order in Wilson, was for the appellant’s “own good . . . for his protection and the best interests of the service” and to “prevent something similar . . . happening again.” Id. at 862. The CGCMR noted that Wilson found an absence of circumstances tending to show a connection to a military need.

The CGCMR acknowledged that an order not to consume alcohol “may still be lawful if it serves a valid military purpose.” Id. at 865. However, because the case involved a guilty plea, there was no basis provided for the order in the record. The majority then surmised that the purpose of the order was “remarkably similar to Wilson,” and thus found an absence of circumstances tending to show a connection to a military need. Id.

The Roach court further held that “the use of a direct order not to drink alcohol is an unjust and unreasonable mechanism to achieve the commanding officer’s goals in circumstances such as these where patently legal and decidedly more effective methods were available to the commanding officer and were specifically rejected (*e.g.*, those provided for in the Personnel Manual, and the simple remedy of not suspending the restriction in Key West, thus making good on his promise that while on patrol, liquor would not be available).” Id. at 866. In other words,

the commander could have not granted liberty at all (especially in Key West, where the appellant had a history of drunk and disorderly conduct) versus giving the appellant the no-drinking order, only to then let the appellant go on liberty in Key West knowing there would be a temptation to drink.

The two-judge dissent highlighted that the legality of the order was not contested at trial so the “military concerns” regarding the order was never properly fleshed-out. The dissent wrote:

It also seems apparent to us that the government, if put to the test, would have easily established a valid military purpose underlying this order, to this individual, in the circumstances of this case. To mention just a few possibilities we refer to appellant’s previous problem in Key West, the nature of the CGC DEPENDABLE’S patrol, the brevity and nature of the overnight in-port in Key West, the importance of avoiding disruption to resumption of the patrol, the nature of appellant’s duties aboard the vessel - both normal duties and emergency response duties in accordance with his Watch, Quarter and Station Bill assignments, the consequences of his absence from the vessel, and the impact on others who would have to undertake additional duties in his absence. Such factors and others might have been fully developed, *in toto* or in various combinations, to establish a “valid military purpose” if the charge had been contested.

Id. at 874.

Three years later, this Court’s predecessor addressed the issue in United States v. Stewart, 33 M.J. 519 (A.F.C.M.R. 1991). The AFMCR held the no-alcohol order in that case was illegal because it was used as a diagnostic tool for analyzing the success of the appellant’s alcohol rehabilitation program. In the case, the Chief, Social Work Services testified that the “no drink” order was used “to get a definitive diagnosis,” and disobeying the order was the final step in identifying the individual as an alcoholic. Id. at 521. The Court found the order “essentially operated as a litmus test in the identification of alcoholics,” and held that the goal of the order

was to “address alcoholism and help those suffering from it.” Id. The Court concluded the order was unlawful.

Two years later, however, our superior Court upheld a conviction for disobeying a no-alcohol order in United States v. Blye, 37 M.J. 92 (C.A.A.F. 1993). There, an appellant, after being suspected of committing several offenses under the influence of alcohol, was given a broad order “not to drink any alcoholic beverages,” but was later found intoxicated at an off-base establishment. Id. at 94. Though these underlying facts were similar to Wilson, the Court found multiple distinctions including the following: (1) the appellant in Wilson pleaded not guilty and contested the legality of the charges against him, while the appellant in Blye pleaded guilty and admitted the legality of the order in his case; and (2) the order not to drink in Wilson was redundant with an existing regulation which prohibited the appellant from consuming alcohol in the barracks, while there was no similar restriction as to the place where the appellant in Blye consumed alcohol. Id.

Most important, however, is the Court’s finding that appellant had been placed into pretrial confinement, and the no-drinking order was “part and parcel of an order which was subsequent to his release from pretrial confinement” to a lesser form of restraint. The Court stated, “We hold today that a military member may be lawfully ordered not to consume alcoholic beverages as a condition of pretrial restriction if such order is reasonably necessary to protect the morale, welfare, and safety of the unit (or the accused); to protect victims or potential witnesses; or to ensure the accused's presence at the court-martial or pretrial hearings in a sober condition.” Id. Finally, in a footnote, the Court wrote, “Given the distinctions between this case and United States v. Wilson, *supra*, it may not be necessary to overrule Wilson. Nevertheless, to the extent

that Wilson can be construed to prohibit an order under the circumstances found here, that aspect of Wilson is expressly overruled.” Id. at fn 5.

In the meantime, our superior Court in 1989 also began taking a “somewhat different approach to issues involving the breadth of an order, examining the specific conduct at issue rather than the theoretical limits of the order.” Padgett, 48 M.J. at 277. This new approach began in United States v. Womack, 29 M.J. 88 (C.M.A. 1989), where our superior Court upheld a “safe sex” order given to an HIV-positive airman, holding that protecting the health of Air Force members was a valid military purpose. When the appellant argued that the order was overly broad because it limited sexual contact with civilians having no connection with the military, the Court noted that the appellant was not charged with having contact with civilians and held that the “appellant [was] not entitled to relief based on other, hypothetical conduct.” 29 M.J. at 91.

Then, in United States v. Dumford, 30 M.J. 137 (C.M.A. 1990), our superior Court upheld a safe-sex order, even though the appellant's partner was a female civilian. The Court held that “the military has a legitimate interest in limiting [appellant’s] contact with others, including civilians.” Id. at 138.

In Padgett, a commander ordered a 25-year-old member to not “to see [a 14-year-old girl], not to talk to her, not to call her, not to have any type of relationship with her, not to be friends with her.” Padgett, 48 M.J. at 275. CAAF found the order lawful, holding the order was not overly broad and had a valid military purpose – namely that the military has a legitimate interest in protecting servicemembers from injury by servicemembers and protecting its reputation within the civilian community. Id. at 277-78.

In United States v. Ranney, 67 M.J. 297 (C.A.A.F. 2009), an appellant was ordered to cease any non-professional relationship with another military member, which included the appellant being restricted from sharing living accommodations, vacations, transportation or any off-duty interests with the other member. Citing to Padgett, our superior Court stated, “an order purporting to regulate personal affairs is not lawful unless it has a military purpose.” Id. at 301. However, CAAF found such a purpose, finding a sufficiency nexus between the appellants’ order and military duty – “namely maintaining the discipline and morale of the AFN detachment.” Id. (citing United States v. Moore, 58 M.J. 466, 468 (C.A.A.F. 2003) (stating that military duty includes “all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of members of a command and directly connected with the maintenance of good order in the service.”))

The Court continued, “In the absence of any evidence that the order was in fact issued for a private end, and with a sufficient nexus between the mandate and a stated military duty -- good order and discipline -- extant in the record, the presumption that the order was lawful remains intact.” Id.

In United States v. Proctor, ACM S32554, 2020 CCA LEXIS 196 (A.F. Ct. Crim. App. Jun. 4, 2020), this Court reviewed six no-contact orders issued to an appellant by his commander. This Court agreed with the military judge in that case that each order “was thought out and thoughtful as to purpose and its parameters,” and was done to ensure the appellant did not tamper with or improperly influence a witness. Id. at *13. This Court found the orders were issued to protect the witness’s safety, as well as for the good order and discipline of the unit, and to safeguard the ongoing investigation.

Analysis

Here, the military judge properly found both orders given by Col KL – the order to not drive and the order to no drink – were lawful under the circumstances of the case and the reasoning provided by Col KL.

Specific to the no-drinking order, Col KL provided clear rationale tying his order to a military need and purpose. Col KL testified that Appellant’s drinking had caused her to underperform at her duties, caused her unit to find additional manning to accomplish the mission, and that the overall laboratory, during the time in which Appellant was the laboratory officer, had declined almost to the point of affecting its civilian accreditation. (R. at 34-35, 39.)

The military judge further held in this ruling that Col KL’s purpose of the no-drinking order was due to a “danger of harm to [Appellant], military members, and the general public and impact on Accused's readiness and completion of Air Force missions.” (App. Ex. XX at 8-9.) Specifically related to Appellant’s military duties and the no-alcohol order, the military judge found that Appellant’s “choices to drink had already negatively impacted her ability to be ready to and to complete her Air Force missions.” (Id. at 10.)

Col KL also considered other alternatives, including pretrial confinement. (R. at 41.) However, because he was concerned with Appellant’s ability to obtain treatment if in pretrial confinement, Col KL opted for the less-restrictive avenue of the no-drinking order. (Id.)

This case is similar to Blye. Like in Blye, Appellant here pled guilty and admitted the legality of the order. Analogous to Blye, Col KL was contemplating placing Appellant into pretrial confinement due to her ongoing alcohol use. However, looking for a lesser form of restraint – and to ensure Appellant would be able to receive ongoing treatment – Col KL opted instead to issue Appellant the no-drinking order. This is essentially what occurred in Blye, just

that Appellant had not yet actually entered pretrial confinement. The end result, however, was the same. Both the appellant in Blye and Appellant here were ordered not to consume alcohol as a means other than pretrial confinement.

Moreover, CAAF's ultimate ruling in Blye – that a no-drinking order is lawful as a condition of pretrial restriction if it is reasonably necessary to protect the morale, welfare, and safety of the unit (or the accused), and to protect victims or potential witnesses – is exactly the order at issue in this case. As noted above, the purpose of this order was to prevent harm to Appellant, military members, the general public, as well as to the readiness of Appellant's unit and her mission. Furthermore, as detailed in more depth below, this case is distinguishable from Wilson, Roach, and Stewart. In short, the no-drinking order was lawful.

This Court's Order requested discussion of the following topics:

- (1) A brief on this issue should include, but is not limited to, discussion on whether the order and underlying command rationale for Appellant's no-drinking order were severable from the accompanying no-driving order;
- (2) whether the lawfulness of the no-drinking order was altered when it was severed from the accompanying excepted no-driving order;
- (3) the effect, if any, of the dismissal of Specification 2 with prejudice on this analysis;
- (4) a discussion about the relevance of Appellant's alcohol dependency, treatment, and timing of the order not to drink alcohol;
- (5) and discussion, *inter alia*, of *United States v. Stewart*, 33 M.J. 519 (A.F.C.M.R. 1991); *United States v. Roach*, 26 M.J. 859 (C.G.C.M.R. 1988), *aff'd*, 29 M.J. 33 (C. M.A. 1989); and *United States v. Wilson*, 12 U.S.C.M.A. 165, 30 C.M.R. 165 (1961).

(AFCCA Order at 5.)

To start, all evidence – including admissions by Appellant and her counsel – show that *two* orders were given on 10 October 2023. As Col KL testified, he ordered Appellant to “cease and desist from all drinking activity as well as driving on and off base.” (R. at 18.) Appellant’s trial defense counsel (during motions practice), Appellant herself (during her providency inquiry), and the Stipulation of Fact all concede the same thing – there were two distinct orders given by Col KL.

Col KL also testified about the distinct need and purposes for the two distinct orders. For the no-drinking order, Col KL testified that Appellant’s drinking had caused her to underperform at her duties, caused her unit to find additional manning to accomplish the mission, and that the overall laboratory, during the time in which Appellant was the laboratory office, had declined almost to the point of affected its accreditation. (R. at 34-35, 39.) For the no-driving order, Col KL said the “the purpose of that order was to protect the base, the mission, the people on the base. I felt that I had a moral obligation to protect the same measure of the public outside the gate.” (R. at 38.)

Adding further distinction between the two orders is that the no-driving order was amended by Col KL in order for Appellant to attend treatment. (R. at 43.) The no-drinking order was never modified.

In his ruling, the military judge discussed each order and stated the purpose for each. For the no-alcohol order, the military judge stated Col KL’s purpose of “danger of harm to [Appellant], military members, and the general public and impact on Accused's readiness and completion of Air Force missions.” (App. Ex. XX at 8-9.) Separately, the military judge stated Col KL’s purpose for the driving order was “cited danger of injury to government property as well as the [Appellant] herself, members of the military, and members of the general public.”

(Id.) Thus, contrary to any concern otherwise, the military judge reviewed these orders separately and distinctly.

Specifically related to Appellant’s military duties and the no-alcohol order, the military judge found that Appellant’s “choices to drink had already negatively impacted her ability to be ready to and to complete her Air Force missions.” (Id. at 10.)

While the military judge collectively referred to the “Order” (meaning the document that housed both the no-alcohol and no-driving orders) when stating there was “a legally sufficient nexus between Col [KL’s] Order and a military duty, namely maintaining the discipline and morale of the unit (through Accused's readiness to complete her Air Force duties). and protecting [Appellant], her fellow servicemembers, members of the general public, and government property from death, injury, or damage,” the context of his ruling shows the military judge is simply stating that both orders contained within the Order document met these thresholds.

As shown, the two orders given to Appellant on 10 October 2023 were distinct and severable from one another.

As to the second topic requested by this Court, the lawfulness of the no-drinking order was not altered by being severed from the no-driving order because, as noted above, it was always a separate and distinct order from the no-driving order. Though they are contained within the same “Order” document, Col KL made it clear – both in the document and within his testimony – that he gave Appellant two separate orders on 10 October 2023 and that those two orders had separate purposes. Both Appellant and her trial defense counsel also admitted there were always two orders. Thus, the two orders were never “severed” from one another – they were always two separate and distinct orders. Furthermore, as already detailed above and as

found by the military judge, the no-drinking order, when viewed separate and apart from the no-driving order, was lawful.

As to the third topic mentioned by this Court, there is no effect on the dismissal of the specification involving the no-driving order. Just because Appellant and the convening authority agreed that the no-driving specification would be dismissed in exchange for her guilty plea to the no-drinking specification did not mean that the no-driving order itself was unlawful in any way, was not a concession that the no-driving order was unlawful, or somehow invalidated either the no-driving order or the no-drinking order. Furthermore, as shown above, the no-drinking order being lawful was not reliant on the no-driving order also being held lawful. Thus, the lawfulness of the no-drinking order was not impacted by the ultimate dismissal of Specification 2 in this case.

This Court's next requested topic – the relevance of Appellant's alcohol dependency, treatment, and timing of the no-drinking order – appears to be in reference to the facts of Stewart, which stand in stark contrast to the facts of this case. As detailed above, the command in Stewart used a no-drinking order solely as a "litmus test" and "diagnostic tool" to determine if the appellant's rehabilitation program was working. Here, however, the purpose of the no-drinking order was to protect Appellant, fellow servicemembers and the public, and to avoid detrimental impacts to Appellant's unit and her duties to her unit. The order was not given to somehow gauge Appellant's progress in treatment.

This is not to say that Appellant's alcohol dependency, continued use, and treatment were not underlying circumstances considered by Col KL when he gave his order. Col KL testified that he was hoping Appellant would get better (an indication that the order was not done as a punishment), and had tried other measures to curb Appellant's behavior prior to ultimately

giving the order (including multiple administrative and UCMJ actions, as well as offering long-term alcohol treatment programs that Appellant refused). Further, although he considered pretrial confinement as opposed to the no-drinking order, Col KL decided on the lesser-restrictive order so that Appellant could still attend treatment.

However, these circumstances did not change the purpose of Col KL's order which related to the protection of Appellant, servicemembers, and the general population, as well as the good order and discipline of the unit. Indeed, Col KL was faced with an officer who was unable to perform her duties and whose consistent conduct, including being drunk at work and bringing alcohol into her workplace, negatively impacted the good order and discipline of her unit and threatened the civilian accreditation of the medical laboratory in which she worked.

Finally on this point, and as discussed more in-depth with Issue III below, Appellant pled guilty to violating this order on 1 January 2024. As of that date, Appellant had not had any issues with alcohol for a full month prior, as she admitted during her providency inquiry that from "1 December 2023 through the end of the year, I had no issues." (R. at 188.) She also admitted in her brief to this Court that she was "sober" in December 2023. (App. Br. at 5.) Thus, on the day and time in which she stands convicted of violating this order, Appellant's own words show that any previous alcohol dependency or treatment had no impact or relevance to her violating the order on 1 January 2024.

Finally, this Court requested discussion on Stewart, Roach, and Wilson. This case bears little resemblance to any of them. The differences in this case compared to Stewart are already addressed above. As opposed to Wilson, which had an absence of any circumstances related to a military need, Col KL's order had a necessary military need and connection. Further, as

discussed above, this case has the same or similar circumstances found in Blye, which our superior Court held were clear distinctions from Wilson.

Roach is also different. Here, unlike in Roach (and as noted in the Roach dissent), the record is replete with evidence showing the connection to a military need. Roach had no such evidence. Col KL also did everything in this case that the Roach court found deficient in the commander's actions in that case. Unlike the commander in Roach, who let that appellant roam free in Key West knowing the appellant's past issues with alcohol *in the same town*, Col KL here took a reasoned approach to addressing Appellant's alcohol use – and certainly did not entice Appellant to drink or allow her to be placed in a vulnerable situation where there would be a temptation to drink. *See* Roach 26 M.J. at 866. In fact, Col KL did the opposite.

To this point, the CGCMR would later say that Roach was the “Court’s admonitions concerning command responsibilities to a known alcoholic accused.” United States v. Scott, 32 M.J. 644 (C.G.C.M.R. 1991). In other words, Roach was more about the commander's overall actions versus the no-drinking order itself. There, the appellant's commander gave the appellant a no-drinking order, but then granted the known alcoholic liberty to roam Key West freely – undoubtedly knowing drinking would follow. The equivalent in this case would be if Col KL gave Appellant a no-drinking order, and then proceeded to drop her off at a bar.

But, of course, that is not what occurred here. Instead, Col KL put Appellant in every possible situation to succeed by ensuring unit resources were in place to get Appellant to treatment and even track her attendance. He also decided to issue the no-drinking order versus more restrictive options so that she could continue to receive treatment. In fact, as discussed above, Appellant herself thanked Col KL for his and the unit's support for her. This is the exact

opposite of the command responsibilities and actions shown in Roach – which is at the heart of the CGCMR’s opinion. Roach is not applicable to this case.

Again, this case is more analogous to Blye. Like Blye, the purpose of the order here was to “the morale, welfare, and safety of the unit (or the accused)” as well as to protect other servicemembers and the general public. *See Blye*, 37 M.J. 94; *see also Padgett*, 48 M.J. at 277-78 (the military has a legitimate interest in protecting servicemembers from injury by servicemembers and protecting its reputation within the civilian community). Not only was Appellant a safety risk to herself as well as her unit, she also risked that reputation of the laboratory in which she worked as her actions threatened its accreditation before a civilian accreditation board. Further, Col KL, much like the commander in Blye, chose to issue a no-drinking order versus placing Appellant in pretrial confinement as a lesser form of restraint. Considering these similarities, this Court should follow our superior Court’s reasoning and find the order lawful.

Finally, Womack provides guidance on this issue as well, as it tells us the focus on potentially overly broad orders should be on the specific conduct at issue rather than the theoretical limits of the order. There, an appellant argued an “safe sex” order was overly broad because it limited sexual contact with civilians having no connection with the military. Womack, 29 M.J. at 91. However, our superior Court found Appellant was not charged with having contact with civilians and that the appellant “[was] not entitled to relief based on other, hypothetical conduct.” Id.

Here, the charged (and unconditionally pled) misconduct involved Appellant violating Col KL’s command not to drink on 1 January 2024, which occurred after Appellant had been sober for at least a month. Furthermore, Appellant’s violation of this order then led to (1) her

attempting to come onto base driven by a person without any identification; (2) her leaving her CAC at the base entry point; (3) Security Forces having to track her down to return her ID; and (4) the ensuing circumstances at her on-base residence. *All* of these circumstances, which would have been avoided had Appellant not violated the order, had a direct connection to military duty, needs, and good order and discipline. Moreover, they were the very military-related issues (Appellant’s and others safety, base security, duty impact, etc.) Col KL contemplated and was the purpose of the no-drinking order from the start. Here, the way in which Appellant violated the order went directly to the purpose of the order itself – thus, applying Womack and looking at the specific conduct at issue, the order to not drink was not overly broad and was lawful.

Ultimately, as discussed in Issue II below, Appellant unconditionally waived this issue at trial. Waiver aside, the military judge properly found that the no-drinking order was lawful and all the facts in this case show this order was separate and distinct from Col KL’s no-driving order given to Appellant on 10 October 2023. Accordingly, this Court should affirm Appellant’s conviction and sentence.

II.

APPELLANT UNCONDITIONALLY WAIVED THIS ISSUE BY PLEADING GUILTY PURSUANT TO HER PLEA AGREEMENT.

Standard of Review and Law

This Court reviews whether an appellant has waived an issue, a question of law, de novo. United States v. Givens, 82 M.J. 211, 215 (C.A.A.F. 2022). Whether a waiver of a right was “knowing and intelligent” is “a question of law [assessed] under a de novo standard of review.” United States v. Rosenthal, 62 M.J. 261, 262 (C.A.A.F. 2005). The voluntariness of a waiver is also reviewed de novo; voluntariness “is measured by reference to the surrounding

circumstances.” United States v. Hasan, 84 M.J. 181, 198 (C.A.A.F. 2024) (citation omitted).

“When . . . an appellant intentionally waives a known right at trial, it is extinguished and may not be raised on appeal.” United States v. Gladue, 67 M.J. 311, 313 (C.A.A.F. 2009).

“An unconditional guilty plea generally waives all pretrial and trial defects that are not jurisdictional or a deprivation of due process of law.” United States v. Jones, 69 M.J. 294, 299 (C.A.A.F. 2011) (citation omitted); United States v. Bradley, 68 M.J. 279, 281 (C.A.A.F. 2010) (“An unconditional plea of guilty waives all nonjurisdictional defects at earlier stages of the proceedings.”).

In Gladue, our superior Court held that a “waive all waivable motions” provision waived, rather than forfeited, a claim of multiplicity on appeal and therefore the multiplicity claim was extinguished and could not be raised on appeal. The Court held the issue was waived because the pretrial agreement required the appellant to waive all waivable motions, the military judge conducted a thorough inquiry to ensure the appellant understood the effect of this provision, and the appellant explicitly indicated his understanding that he was waiving the right to raise any waivable motion. *See Gladue*, 67 M.J. at 313.

Prior to 2016, motions to dismiss for a failure to state an offense were nonwaivable, even via a guilty plea. *See, e.g., United States v. Schweitzer*, 68 M.J. 133, 136 (C.A.A.F. 2009) (internal quotation marks omitted) (a “guilty plea does not waive the defect of a specification that fails to state an offense” (*quoting United States v. Boyett*, 42 M.J. 150, 152 (C.A.A.F. 1995) (citing, in turn, the pre-2016 version of R.C.M. 907))).

However, the President amended R.C.M. 907 in 2016, and listed claims of failure to state an offense as waivable. R.C.M. 907(b)(2)(E) (expressly listing failure to state an offense as non-jurisdictional and waivable). *See also United States v. Cotton*, 535 U.S. 625, 630, 122 S. Ct.

1781, 152 L. Ed. 2d 860 (2002) (clarifying the difference between jurisdictional challenges and failure to state an offense claims, and holding that “defects in an indictment do not deprive a court of its power to adjudicate a case”).

Both this Court and the Army Court of Criminal Appeals have since held that a challenge to a specification for failure to state an offense is a waivable motion. *See United States v. Kennedy*, ACM S32660, 2021 CCA LEXIS 575 (A.F. Ct. Crim. App. Nov. 1, 2021) (citing Rule for Courts-Martial (R.C.M.) 907(b)(2)(E)); *United States v. Sanchez*, 81 M.J. 501, 504 (A. Ct. Crim. App. 2021).⁹

The only nonwaivable motion remaining under R.C.M. 907(b) is a motion to dismiss “if the court-martial lacks jurisdiction to try the accused for the offense.”

Recently, our superior Court reviewed unconditional guilty pleas and waivable motions in *United States v. Suarez*, __ M.J. __, 2025 CAAF LEXIS 651 (C.A.A.F. Aug. 5, 2025). There, the Court held an appellant’s unconditional guilty plea waived appellate review of his UCI claim. The Court held the plea agreement in the case included a “waive all waivable motions” provision, “the military judge conducted a thorough inquiry into Appellant's understanding of, and agreement with, the terms of the agreement in accordance with Rule for Courts-Martial 910(f)(4) and specifically advised Appellant the waiver provision would waive appellate review of his UCI claim.” *Id.* at *14. The Court further found the appellant “unequivocally stated his understanding of the term, and trial defense counsel agreed with the military judge’s

⁹ In *United States v. Day*, 83 M.J. 53, 57 (C.A.A.F. 2022), our superior Court held that in that particularly case, a failure to state an offense motion was not waived following an unconditional guilty plea and an agreement to waive all waivable motions. However, in that case, the military judge “unambiguously advised” the appellant that “a motion to dismiss for failure to state an offense is not waivable.” *Id.* The Court held that since the judge gave contrary advice, the motion was not waived.

interpretation of the effect of the term.”

Importantly, our superior Court held the claim was waived despite the appellant submitting a post-trial declaration stating that his trial defense counsel assured him his guilty plea would not waive the UCI issue and averring he would not have pled guilty but for that assurance. Id. at *15. That appellant’s trial defense counsel also submitted a post-trial affidavit acknowledging that he advised the appellant that “the UCI issue was preserved and would be reviewed,” and stating that the appellant did not intend to waive the UCI motion and did not believe it was waivable. Finally, the appellant actually raised the UCI issue to the Navy-Marine Corps Court of Criminal Appeals. Id.

Based on the changes to Article 66(d)(1)(A), UCMJ, 10 U.S.C. § 866(d)(1)(A), in which Congress removed the phrase “should be approved,” and because the offense in this case occurred after 1 January 2021, this Court no longer has the ability to pierce waiver with regard to findings. *See United States v. George*, ACM 40397, 2024 CCA LEXIS 224 (A.F. Ct. Crim. App. 7 June 2024) (*citing United States v. Chin*, 75 M.J. 220, 223 (C.A.A.F. 2016); United States v. Coley, ARMY 20220231, 2024 CCA LEXIS 127, at *8-9 (A. Ct. Crim. App. 13 Mar. 2024).

Analysis

Here, Appellant challenged the lawfulness of Col KL’s order by way of filing a motion to dismiss for failure to state an offense. Appellant’s unconditional guilty plea waived appellate review of any failure to state an offense claim regarding the lawfulness of Col KL’s order. Following the denial of her failure to state an offense motion, Appellant submitted an unconditional plea agreement where she agreed to “waive all waivable motions.” (App. Ex. XXIV; *see also* Pros. Ex. 1 at 3.) Crucially, neither Appellant’s plea agreement nor her plea at trial was conditioned on her failure to state an offense motion being preserved on appeal.

Next, in discussing this provision at trial, the military judge said to Appellant’s defense counsel, “*besides the motions we resolved at the last session of the court, were there any other motions that you are not making or are waiving pursuant to this provision of the plea agreement?*” (R. at 203.) (emphasis added.) The clear implication here is the understanding that the failure to state an offense motion – which was “resolved at the last session of court” – was being affirmatively waived by Appellant pursuant to the plea agreement. Appellant and the military judge also discussed the provision, and Appellant agreed that she had discussed the provision with her counsel and its consequences, and that no one had forced her to enter into the agreement. (R. at 204.) Appellant also affirmatively stated that she wanted to give up making motions she could waive by law and that she had no questions about the provision. (R. at 207.)

Moreover, Appellant did not raise this issue on appeal – yet another clear indication that she intentionally and knowingly waived this issue pursuant to her plea agreement. To this point, Appellant’s silence regarding this issue on appeal is a sharp distinction from that in Saurez where both the appellant and his counsel claimed they thought their issue was preserved despite the “waive all waivable motions.” The appellant in Suarez also actually raised the issue on appeal to our sister court. Here, however, neither Appellant nor her counsel have ever claimed they believed and intended for the issue to be preserved, and Appellant also did not raise the issue on appeal. This case is also distinct from Day because the military judge here never said Appellant’s failure to state an offense motion was not waivable.

Finally, prior to 2016, this Court and our sister Courts have varied application of waiver to unlawful order challenges. See United States v. Ebanks, 29 M.J. 926, 929 (A.F.C.M.R. 1989) (“Appellant’s unconditional guilty plea also waived the issue that the ‘safe sex’ order was unlawful as an excessive intrusion on personal rights.”); see also United States v. Robertson, No.

NMCM 200200329, 2002 CCA LEXIS 240 (N-M Ct. Crim. App. Oct. 18, 2002); *but see* United States v. Button, 31 M.J. 897, 900 (A.F.C.M.R. 1990) (“We do not consider the appellant’s plea of guilty to this offense after the motion to dismiss was denied as having waived the issue, since the question raised goes to the lawfulness of the order, not the factual issue of his guilt of the offense charged.”)

However, these cases all occurred prior to 2016. Since 2016, under R.C.M. 907, only a motion to dismiss based on jurisdictional defect remains as a nonwaivable motion. All other motions to dismiss, including for failure to state an offense, are waivable. Here, the jurisdiction of Appellant under the UCMJ is not at issue. Further, Appellant moved to dismiss this offense for failure to state an offense, which is specifically listed in R.C.M. 907 as a waivable motion.

Considering all of these factors, the record is clear that Appellant’s unconditional guilty plea and plea agreement affirmatively, knowingly, and intentionally waived this issue on appeal. Considering this Court no longer has the ability to pierce waiver with regard to findings, this Court should find the issue is waived and affirm Appellant’s conviction and sentence. *See* George, at *3.

III.

THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION IN ACCEPTING APPELLANT’S GUILTY PLEA.

Standard of Review

A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion. United States v. Inabinette, 66 M.J. 320, 322 (C.A.A.F. 2008). This Court explained that an abuse of discretion, in the guilty plea context, "occurs only when the decision of the military judge is arbitrary, clearly unreasonable, or clearly erroneous." United States v. McAfee, 64 M.J.

675, 678 (A.F. Ct. Crim. App. 2007). The abuse of discretion standard requires then a mere difference of opinion. United States v. Wicks, 73 M.J. 93, 98 (C.A.A.F. 2014). Recently, our superior Court has reiterated this deferential standard – “We ‘giv[e] broad discretion to military judge’s in accepting [guilty] pleas.’” United States v. Navarro-Aguirre, 2025 CAAF LEXIS 614, at *20 (C.A.A.F. 24 July 2025) (internal citations omitted).

“[W]hen a plea of guilty is attacked for the first time on appeal, the facts will be reviewed in the light most favorable to the government.” United States v. Arnold, 40 M.J. 744, 745 (A.F.C.M.R. 1994). When a military judge decides there is a factual basis to accept a guilty plea an appellate court “will defer to [the military judge]’s discretionary decision so long as that decision was within a range of reasonable possible decisions.” United States v. Holmes, 65 M.J. 684, 686 (N.M. Ct. Crim. App. 2007).

Law

An appellate court will set aside a decision to accept a guilty plea only where it finds a substantial basis in law or fact for questioning the plea. United States v. Shaw, 64 M.J. 460, 462 (C.A.A.F. 2007). The record must contain a sufficient factual basis to support a guilty plea. United States v. Care, 18 C.M.A. 535, 40 C.M.R. 247 (C.M.A. 1969); Rule for Courts-Martial 910(e), Manual for Courts-Martial, United States (2012 ed.) (MCM).

The test for determining the providency of a guilty plea is whether there is a substantial conflict raised in the record between Appellant’s plea of guilty and some inconsistent statement. United States v. James, 55 M.J. 297 (C.A.A.F. 2001); United States v. Shearer, 44 M.J. 330, 335 (C.A.A.F. 1996). Once a military judge has accepted a plea and entered findings, an appellate court will not disturb the findings and plea “unless it finds a substantial conflict between the plea

and the accused's statements or other evidence of record.” United States v. Peterson, 47 M.J. 231, 233 (C.A.A.F. 1997) (*citing* United States v. Garcia, 44 M.J. 497, 498 (C.A.A.F. 1996)).

When reviewing a providence inquiry, the Court does not end its analysis at the edge of the inquiry. It can look at the entire record to determine whether the dictates of Article 45, UCMJ, 10 U.S.C. § 845; Rule for Courts-Martial 910(e); and United States v. Care and its progeny have been met. United States v. Jordan, 57 M.J. 236, 238 (C.A.A.F. 2002) (“When this Court has addressed a bare bones providence inquiry, we have not ended our analysis at the edge of the providence inquiry but, rather, looked to the entire record to determine whether the dictates of Article 45, RCM 910, and Care and its progeny have been met.”).

Analysis

As noted above, Appellant bears the burden of establishing that the military judge in this case abused his discretion in accepting Appellant’s pleas. Appellant has failed in that burden because, though she has not yet responded to this Court’s specified issues, Appellant filed a merits brief with this Court previously raising no issues regarding the providency of her plea. Because Appellant did not even raise a providency issue challenging her guilty plea, she certainly has not met her burden in showing the military judge abused his discretion in this case. Yet, even if she had, the record shows the military judge did not abuse his discretion in accepting Appellant’s pleas. Instead, the Care inquiry and Stipulation of Fact in this case, as well as the entire record, contains a sufficient factual basis to support Appellant’s guilty plea. Further, Appellant has failed to show there is a substantial conflict raised between her plea and any other evidence of record because there is no conflict. In fact, the entire record substantiates Appellant’s plea.

During Appellant’s guilty plea, she admitted to signing “orders” (*plural*) on 10 October 2023 and that one of those orders involved her not drinking alcohol. (R. at 186, 194.) Appellant then stated that from 1 December 2023 through the end of the year, she had no issues with alcohol. (R. at 187.) Importantly, Appellant’s admission here shows that she was mentally capable and physically able to refrain from drinking alcohol for an entire month prior to 1 January 2024. In fact, per Appellant in her own brief to this Court, “by December 2023, [Appellant] was sober.” (App. Br. at 5.)

Appellant then admitted on 1 January 2024, she violated Col KL’s command by drinking alcohol. (R. at 188.) Here, Appellant discussed her thinking and rationale behind taking that first drink. Importantly, her taking that drink was not because she was *dependent* on the alcohol or because she was in some sort of mental health-induced state of need for the alcohol. Instead, Appellant simply said she wanted to celebrate the new year and have a drink like most people were having that night. This reasoning – I simply want to celebrate New Years Eve like everyone else – shows Appellant was thinking of sound mind and was under no duress or mental crisis in thinking that she *had* to have a drink due to her prior battles with alcohol.

Indeed, Appellant admitted she “willfully consumed alcohol,” and was “not forced, coerced, manipulated, or otherwise tricked into consuming alcohol against my will.” (R. at 189-90.) She further said, “the initial drink was completely within my control,” and that the “decision to consume alcohol was mine alone.” (R. at 190.) Here again, the circumstances show Appellant did not take a drink due to any compulsion, need, or uncontrollable urge to drink due to alcohol addiction, but instead freely took a drink so that she could celebrate New Years Eve like other people. Considering Appellant had gone a full month prior to this occasion without drinking and Appellant’s own concession that she was “sober” in December 2023, Appellant’s

explanation shows her decision to drink on 1 January 2024 was one made after thoughtful reflection – not in an alcoholic-induced fit.

Appellant also admitted that she understood why Col KL’s order to not drink alcohol with lawful. She agreed that Col KL had said that the purpose of the order was to protect Appellant and others and to also enhance her unit’s good order and discipline. (R. at 195.) She also said she had “no doubt” that Col KL’s purpose for the order was sincere – and even went so far as to express her gratefulness for Col KL. (R. at 187, 195.)

Given these circumstances, the military judge conducted a thorough and complete providency inquiry with Appellant to establish her guilt to the pled offense. Importantly, her trial defense counsel believed that to be the case by responded, “No Your Honor,” when the military judge asked if further inquiry was required. Her appellate defense counsel seemingly believed this as well considering no issue was raised concerning the providency of Appellant’s plea. And finally, Appellant herself did not believe any issue existed regarding her plea inquiry considering this issue was not personally raised by her pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

This Court’s Order specifically requested this brief address several three specific items:

- a discussion on the plea inquiry into the lawfulness of “the Order” that relied in part on a prior ruling from the military judge (Appellate Exhibit XX) who jointly considered “the Order” for Appellant to refrain from both consuming alcohol and operating a motor vehicle when determining lawfulness;
- the effect on the providence and voluntariness of the plea based on any reliance on the prior combined ruling and the subsequently dismissed with prejudice no-driving order;
- and a discussion about Appellant’s alcohol dependency diagnosis vis-à-vis Appellant’s mental health as it relates to any associated

defenses and the adequacy of the military judge's inquiry into such potential defenses and Appellant's mental health status.

(*See* Order, dated 7 October 2025.)

As to the first item, as discussed in Issue I above, the military judge did not “jointly consider” the two orders contained within the “Order” document. While the military judge at times would singularly address the “Order” document containing the two orders, the military judge still provided specific reasoning and analysis as to why each order (the order to not drink and the order to not drive) were lawful. Specifically for the order not to drink, the military judge held, “In that Order as to alcohol use, Col [KL] cited danger of harm to [Appellant], military members, and the general public and impact on Accused's readiness and completion of Air Force missions.” (App. Ex. XX at 8.) This was different that the purpose of the no driving order, which the military judge said was based on “danger of injury to government property as well as [Appellant] herself, members of the military, and the members of the general public.” (Id.)

Importantly, in paragraph 41 of his ruling, the military judge again addressed the no-drinking order individually, stating, “Additionally, issuing an order as a mechanism to impress upon Accused the importance of her taking action (refraining from alcohol consumption) to ensure her readiness and completion of her Air Force missions served a legitimate military purpose.” (Id. at 10.)

As shown here and in Issue I above, the military judge analyzed the purpose for each order individual in ruling both were lawful. To this point, the military judge did conclude his ruling by discussing the Order (meaning both orders), stating:

Col [KL] articulated a justifiable military-duty rationale for giving [Appellant] the Order; the Order was reasonably necessary to safeguard and protect the morale, discipline, and usefulness of the members of a command; the Order was directly connected with the

maintenance of good order in the service; and the Order was necessary to protect [Appellant], her fellow service members, and members of the general public. The substance of Col [KL] Order as to what it directed [Appellant] to refrain from doing was sufficiently narrow in the context of [Appellant's] past actions.

(App. Ex. XX at 10.) However, when read in context, the military judge here was finding that both orders contained within the Order document met each of these conditions.

Furthermore, Appellant admitted in the Stipulation of Fact that the military judge “ruled that Colonel [KL’s] *orders* that [Appellant] refrain from operating a motor vehicle *and* from consuming alcohol were lawful *orders*.” (Id. at 3.) (emphasis added.) Here again, Appellant and her counsel recognized that the military judge’s ruling was not an all-in-one ruling, but instead addressed each order individually before holding that both orders were lawful.

Moreover, Appellant’s plea inquiry made it clear that Appellant was discussing the lawfulness of the order to not drink alcohol when she pled guilty. When discussing lawfulness, Appellant specifically mentioned the “order to not consume alcohol,” and agreed that Col KL testified that the order was given to protect her, members of the public, and enhance the good order and discipline within the unit.¹⁰ (R. at 195.)

In sum, while both the military judge and Appellant discussed the military judge’s ruling that held both orders were lawful, the discussion at trial about lawfulness centered on the no-drinking order.

As to this Court’s second specified item, Appellant did refer to the military judge’s ruling during her plea inquiry. However, as shown, the military judge then engaged in further dialogue

¹⁰ This reasoning coincides with the reasoning mentioned in the military judge’s ruling that the no alcohol order was given due to “danger of harm to [Appellant], military members, and the general public and impact on Accused’s readiness and completion of Air Force missions.” (See App. Ex. XX at 8.)

with Appellant about why she believed the no-drinking order was lawful, including a discussion about Col KL's basis for the order. Appellant agreed with Col KL's purpose for the order and also agreed that the purpose was sincere.

To this point, on this second specified item, the Court's Order speaks of a "subsequently dismissed with prejudice no-driving order." To clarify, while the specification involving the no-driving order was dismissed, the no-driving order itself was never dismissed or in any way invalidated. Indeed, just because the no-driving specification was dismissed did not mean that that order itself was also dismissed or was found to be unlawful in any way. Furthermore, as shown above, Appellant's guilty plea to the no-drinking order was not reliant upon the no-driving order. Again, while the military judge and Appellant briefly discussed how Appellant was issued two orders, both then specifically addressed the lawfulness of the no-drinking order.

As to the voluntariness of Appellant's plea, while the military judge's ruling finding the no-drinking order lawful likely played a part in Appellant offering to and ultimately pleading guilty, the ruling did not affect the voluntariness of her plea. In fact, there is zero indication that Appellant felt pressured, coerced, or otherwise, to plead guilty based on the military judge's finding that the orders in this case were lawful. Appellant repeatedly told the military judge that she was pleading guilty and had entered into her plea agreement of her own free will, and free from any coercion, duress, etc. There is no support or any indication that Appellant did not freely enter into her plea agreement or voluntarily plead guilty.

Importantly, Appellant was ably defended by a military defense counsel who was actively involved on Appellant's behalf throughout the court-martial. The record provides no indication of ineffective assistance of counsel or that Appellant was in anyway pressured into

pleading guilty or entering into the pretrial agreement.¹¹ Absent these indications, this Court should find no reason to question the voluntariness of Appellant’s plea – especially when neither Appellant’s appellate defense counsel or Appellant herself have alleged the plea was involuntarily in any way.

In sum, Appellant’s plea here was specifically to the no-alcohol order. This is not a case where Appellant admitted that only the no-driving order was lawful, never admitted that the no-drinking order was lawful, but then pled guilty to the no-drinking order specification while the no-driving order specification as dismissed. In that case, Appellant would have never admitted that the order to which she pled guilty – the no-drinking order – was lawful.

But that is not what occurred here. While Appellant certainly referenced the military judge’s ruling that found *both* orders were lawful, Appellant and the military judge then had a specific discussion about why the no-drinking order was lawful. Importantly, this discussion involved Appellant and the military judge discussing things besides the military judge’s ruling – specifically, they discussed Col KL’s testimony, his reasons for giving the no-drinking order, and his sincerity in giving the order. As shown, there is no reason to question the providency or voluntariness of Appellant’s plea.

Finally, this Court requested a discussion “about Appellant’s alcohol dependency diagnosis vis-à-vis Appellant’s mental health as it relates to any associated defenses and the adequacy of the military judge’s inquiry into such potential defenses and Appellant’s mental health status.” (*See Order.*) As noted above, the military judge and all parties determined the defense of duress was not at issue in this case.

¹¹ Appellant has never alleged an ineffective assistance of counsel claim or ever claimed she was pressured into pleading guilty or that she involuntarily entered into her plea agreement.

Appellant and the military judge discussed the issue of “voluntariness” with Appellant, specifically to determine whether Appellant’s act of taking that first drink on 1 January 2024 was voluntarily and of her own free will, or if it was somehow a compulsory or involuntarily action resulting from her prior alcohol issues. In the opening monologue of her providency inquiry, Appellant firmly stated that the first drink she had that night was her own choice and that she had complete control on whether to take that drink or not. (R. at 189-90.) Appellant did then state that her ensuing drinks – the ones coming *after* that first drink of alcohol – were the result of her prior issues returning. However, Appellant made it a point to state that the “initial drink was completely within my control” and that her “decision to consume alcohol was [hers] alone.” (Id.)

Importantly, the military judge then followed up on Appellant’s statements by asking further questions about the voluntariness of her actions. Focusing on that first drink she had, the military judge asked Appellant multiple questions, including whether she was conscious of the fact that just one drink would violate the order, whether she could have refrained from drinking that first drink, or if anything was impacting or affecting her ability to take that initial drink. Appellant agreed that she made the conscious decision to take that first drink, that she could have refrained from taking that first drink, and that nothing was impacting or affecting her ability to make the conscious decision to take that initial drink and violate the order. (R. at 197-98.)

Here, both the military judge and Appellant were quite thorough in dispelling any notion that her prior alcohol condition caused or compelling her to take that initial drink that night. Instead, based on Appellant’s own statements, she took that first drink that night simply because she wanted to celebrate New Years Eve like everyone else. It had nothing to do with alcohol

dependency or some compulsory and uncontrollable urge to drink alcohol. Granted, the ensuing drinks that occurred on that date may be a different story. However, Appellant recognized and admitted that taking that initial drink – which was unaffected by any alcoholic condition – was taken of her own free will and was under her complete control. She also acknowledged that taking this one drink alone violated the order.

Appellant’s other statements – both at trial and now on appeal – also highlight this fact. At trial, Appellant highlighted that she had gone the entire month of December – or 31 days prior to the incident – with “no issues” involving alcohol. (R. at 187.) Then, in her brief to this Court, Appellant stated that “by December, [she] was sober.” (App. Br. at 5.) Here again, the record shows Appellant was in complete control of her faculties and her decision making when she took that initial drink of alcohol on 1 January 2024. As shown, both Appellant and the military judge discussed and thoroughly dispelled any notion that alcohol dependency played a role in Appellant taking her initial drink that night.

This Court recently addressed mental health in plea inquiries. *See* United States v. Sanger, ACM S32773, 2025 CCA LEXIS 370 (A.F. Ct. Crim. App. Aug. 7, 2025). This Court highlighted our superior Court’s holding in United State v. Harris which stated:

We do not see how an accused can make an informed plea without knowledge that he suffered a severe mental disease or defect at the time of the offense. Nor is it possible for a military judge to conduct the necessary Care inquiry into an accused's pleas without exploring the impact of any mental health issues on those pleas.

61 M.J. 391, 398 (C.A.A.F. 2005). In Sanger, the appellant discussed his mental health for the first time during his unsworn statement, stating that his “decision making was really inhibited,” that he was not “remembering what [he] posted,” and that he was in “a haze” during this time in his life. Sanger, at *33. This Court held that these statements “raise[d] additional concerns

about his ability to form specific intent at the time of the offense,” and that the statements “warranted additional discussion and clarification by the military judge to ensure Appellant's plea was informed and provident.” *Id.*, *citing Harris*, 61 M.J. 391.

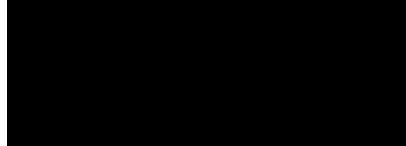
In this case, however, Appellant’s mental health - vis-à-vis alcohol dependency – was front and center in this case from the beginning, and was discussed thoroughly throughout the record, starting with motions practice and testimony, and then ultimately during Appellant’s providency inquiry. This is exactly what our superior Court in *Harris* said should occur – indeed, the military judge did “explor[e] the impact” of Appellant’s past alcohol dependency issues on her guilty plea. Thus, where the respective courts found that *Harris* and *Sanger* lacked inquiry into suspected mental health issues, Appellant and the military judge here addressed the mental health issue – alcohol dependency – head-on. And Appellant herself completely extinguished any notion that alcohol dependency played any role in her decision to take that initial drink.

In sum, the military judge did not abuse his discretion in accepting Appellant’s plea. The military judge’s discussion with Appellant, specifically with regard to whether she chose to drink on 1 January 2024 freely and of a sound mind, was neither arbitrary, clearly unreasonable, or clearly erroneous. *See McAfee*, 64 M.J. at 678. Here, the record contains a sufficient factual basis to support Appellant voluntary guilty plea and there are no substantial conflicts in the record between Appellant’s plea and any other evidence. While this Court may have a difference of opinion as to how the military judge conduct the plea inquiry, the abuse of discretion standard requires more – it requires a substantial basis for questioning the plea. *See Wicks*, 73 M.J. at 98; *Inabinette*, 66 M.J. at 322. Here, when providing the military judge “broad discretion” in

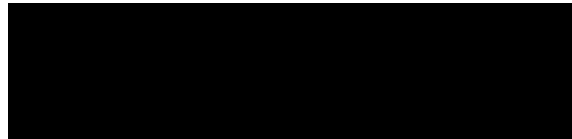
accepting Appellant's guilty plea,¹² this Court should find the military judge did not abuse his discretion in accepting Appellant's guilty plea and affirm Appellant's conviction and sentence.

CONCLUSION

WHEREFORE, this Court should deny affirm Appellant's provident guilty plea and sentence.



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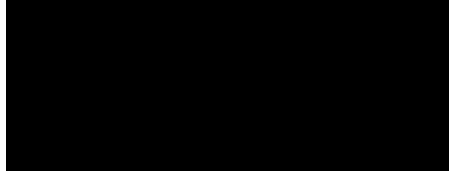


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¹² See Navarro-Aguirre, at *20.

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 7 November 2025 via electronic filing.



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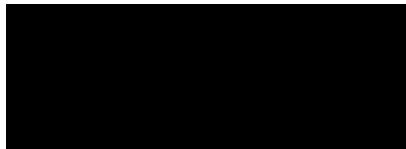
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee,</i>)	MOTION TO EXCEED
	)	PAGE LIMIT
v.)	
	)	ACM 40670
Captain (O-3))	
SHELLENE C. SAWYER, USAF	)	Panel No. 1
<i>Appellant.</i>)	

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

Pursuant to Rules 17.3 and 23.3(q) of the United States Air Force Court of Criminal Appeals Rules of Practice and Procedure, the United States moves to file its Brief in Response to Specified Issues in excess of Rule 17.3’s page length limitations. This Answer requires slightly exceeding this Honorable Court’s page length limitation by one page due to the nature of the issues specified by this Court. This Court’s specified issues require extensive discussion of the military judge’s ruling and testimony relating to a failure to state an offense motion raised by Appellant at trial.

WHEREFORE, the United States respectfully requests this Court grant this motion to slightly exceed length limitations in its Answer.

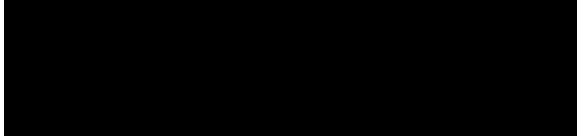


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GRANTED


13 Nov 2025



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 7 November 2025 via electronic filing.



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