UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40649 (f rev)**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Gavin D. TURTU	)	**DOCKETING**
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

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

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

ORDERED:

That the Record of Trial in the above styled matter is referred to Panel 2.

Based on the procedural history of this case, no additional enlargements of time for the filing of Appellant's assignments of error will be granted absent exceptional circumstances.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	
	)	Before Panel 2
Senior Airman (E-4) **GAVIN D. TURTU** United States Air Force, *Appellant.*	)	No. ACM 40649 (f rev)
	)	14 October 2025

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

Assignments of Error

I.

The portion of the sentence providing for a dishonorable discharge instead of a bad-conduct discharge is inappropriately severe.

II.

The post-trial processing error and resulting unreasonable delay warrant appropriate sentencing relief pursuant to Article 66(d)(2), Uniform Code of Military Justice, 10 U.S.C. § 866(d)(2).

Statement of the Case

Appellant, Senior Airman (SrA) Gavin D. Turtu, U.S. Air Force, was tried by a general court-martial convened by the Commander, Eighteenth Air Force (AMC), at Little Rock Air Force Base (AFB), Arkansas, on 1 to 2 April 2024. The general court-martial consisted of a military judge alone. Consistent with SrA Turtu's pleas, the military judge found him guilty of four specifications of violating Article 128b of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b.[1] Trial Tr. 15, 104–05. The government dismissed with prejudice an additional

[1] The version of Article 128b that applied at the time of the offense and the time of trial was that enacted by the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY)

specification alleging a violation of Article 128b, UCMJ. Trial Tr. 15, 292. The military judge sentenced SrA Turtu to a reprimand, reduction to the grade of E-1, a dishonorable discharge, and confinement for a total of twenty-four months. Trial Tr. 293.[2]

The convening authority took no action on the findings but suspended the adjudged reduction in rank "for six months from 10 April 2024, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action." Convening Authority Decision on Action – *United States v. SrA Gavin D. Turtu* (23 Apr. 2024). The convening authority also deferred automatic forfeitures until the date on which the military judge signed the entry of judgment and waived automatic forfeitures "for a period of six (6) months, or release from confinement, or expiration of term of service, whichever is sooner, with the waiver commencing on the date the military judge signs the entry of judgment." *Id.*[3] The convening authority directed that all pay and allowances be provided to SrA Turtu's spouse for her benefit and that of SrA Turtu's three dependent children. Convening Authority Decision on Action.

After the military judge signed the entry of judgment on 19 July 2025, the Government initially docketed with this Court what purported to be the record of trial on 29 July 2024.[4] On 30 June 2025, this Court found that "[t]he original certified record of trial is not complete." *United*

2019 as amended by the NDAA for FY 2020. John S. McCain NDAA for FY 2019, Pub. L. No. 115-232, § 532, 132 Stat. 1636, 1759 (2018); NDAA for FY 2020, Pub. L. No. 116-92, § 1731(a)(20), 133 Stat. 1198, 1813 (2019).

[2] The military judge sentenced SrA Turtu to confinement for twenty-four months for each of the four specifications and ordered all sentences to confinement to run concurrently. Trial Tr. 293. The military judge also awarded SrA Turtu six days of confinement credit. *Id.*

[3] The military judge signed the entry of judgment on 19 July 2024. Entry of Judgment in the Case of *United States v. Senior Airman Gavin D. Turtu* (19 Jul. 2024).

[4] This Court may take judicial notice of its own records to establish the date of initial docketing. *See United States v. Lovett*, 23 C.M.R. 168, 172 (C.M.A. 1957) ("An appellate court . . . can take judicial notice of its own records.").

States v. Turtu, No. ACM 40649, 2025 CCA LEXIS 300, at *4 (A.F. Ct. Crim. App. June 30, 2025) (order). This Court accordingly remanded "the record for correction in accordance with the procedures prescribed by R.C.M. 1112." *Id.* This Court redocketed the case on 15 August 2025. *United States v. Turtu*, No. ACM 40649 (f rev) (A.F. Ct. Crim. App. Aug. 15, 2025) (notice of docketing).

Statement of Facts

Based on his guilty pleas, SrA Turtu was convicted of four domestic violence offenses against his twin infant daughters. Charge Sheet; Trial Tr. 15, 104–05; Pros. Ex. 1. He committed the offenses in the November-to-December 2022 timeframe. Charge Sheet; Pros. Ex. 1. Two of the domestic violence convictions were for aggravated assault by inflicting grievous bodily harm; the other two were for assaults consummated by batteries. Charge Sheet. *See generally* Pros. Ex. 1; Trial Tr. 33–77. As a result of SrA Turtu's actions, his daughter ST suffered the following injuries:

> a bruise on her left cheek; a bruise on her right cheek near her ear; anterior/lateral right side fractures of ribs 4 and 5; anterior/lateral left side rib fractures of ribs 5 and 6; anterior/lateral left side rib fractures of ribs 6 and 7; and a possible anterior/lateral right side rib fracture of rib 6.

Pros. Ex. 1 at ¶ 11. SrA Turtu's daughter LT suffered "a bruise on her left cheek; anterior/lateral right side rib fractures of ribs 3, 4, 5, 6, and 7; lacerations and hematomas of her liver; and a possible adrenal hemorrhage." *Id.*

The victims' Article 6b representative (their mother, MT) submitted a victim impact statement. Ct. Ex. A; Trial Tr. 200. It reported that the twins "have not had lasting impacts from the acts committed by their father, SrA Gavin Turtu. Both girls have recovered fully from any injuries with no lingering or lasting complications. They have and will continue to grow up to be developmentally and physically equivalent to their peers." Ct. Ex. A.

More than fifteen months passed between the last of SrA Turtu's offenses and his court-martial. *Compare* Charge Sheet, *with* Trial Tr. 1. During that time, he participated in multiple rehabilitative programs. For example, he completed an eight-hour Parenting with Love & Logic program offered by the Little Rock AFB Family Advocacy Program. Def. Ex. K. He took a two-day anger management course. Def. Ex. L; Trial Tr. 244, 264–65. He attended the Change Step group, a program designed to help military men "end abusive behaviors and learn skills for engaging in safe and healthy relationships." Def. Ex. M; Trial Tr. 244. According to MT, SrA Turtu "took advantage of every single course he could at Family Advocacy." Trial Tr. 244.

Between the time of his offenses and the court-martial, according to MT, SrA Turtu developed "a solid, loving relationship" with his daughters. *Id.* After the expiration of both civilian and military protective orders in the July 2023 timeframe, SrA Turtu lived in the same home with MT and their three children, including ST and LT, until March 2024. *Id.* at 243–44, 247, 265. After supervising SrA Turtu's interactions with his daughters, MT trusted him sufficiently by late October 2023 to allow him to look after ST and LT by himself. *Id.* at 245. Before referral of the charges to a general court-martial, MT requested that no disciplinary action be taken against SrA Turtu and that he be allowed to remain in the Air Force. MT Memorandum for 19 AW/JA, Subject: Opportunity to Submit Views on Disposition (1 Aug. 2023). She explained, in part:

> SrA Turtu has made great strides to fix his mental health to include individual group/couple's therapy, anger management, parenting courses, & beginning medication. During the month he's been back in the home, I have not been concerned about the interactions with [LT]. He has been helpful, playful, & interactive with her needs & care. I don't feel this event should mar SrA Turtu's military career. This would only hurt [LT] and her siblings.

Id.

By the time of trial, MT had been awarded sole custody of the couple's three children, including the two victims in this case, and had filed for divorce. Court Ex. A; Trial Tr. 246–47, 256–57.

TGB, Ph.D.—a licensed psychologist at Little Rock AFB—treated SrA Turtu and provided this assessment:

> 1. SRA Turtu received psychological services from 17 Feb 2023 to 25 Mar 2024. During that time period he received 16 individual sessions, participated in 09 Unified Protocol Group sessions (a group to learn how to experience and regulate emotions), and 35 [Mental Health] Process Group sessions (a group to be supportive of others going through difficult times).
>
> 2. SRA Turtu attended every offered session and carefully completed all homework assignments. SRA Turtu demonstrated implementation of the skills he was taught and a better understanding of himself, origins of his emotions, and emotion regulation.
>
> 3. I observed SRA Turtu apply himself and demonstrate application of the skills he learned during difficult episodes in his life and he was able to articulate an understanding of the strategies he utilized and an intention to regulate his emotions. SRA Turtu actively elevated himself from the dysfunction of his childhood and repeatedly made decisions to be supportive of his wife and children even at his own sacrifice and personal cost based on his desire to be a good husband and father.
>
> 4. SRA Turtu showed tremendous growth during the therapy experience and demonstrated a willingness and ability to help others regulate his emotions.

Def. Ex. I.

Another mental health professional—GH, Ph.D., a clinical and forensic psychologist who formerly served on active duty in that capacity in the Air Force—also provided an assessment of SrA Turtu. Def. Ex. J. He wrote, "Review of SrA Turtu's mental health records reflects that he has made significant progress in his mental health treatment, starting in February 2023 and progressing until the present moment." *Id.* Dr. GH continued, "SrA Turtu has exhibited a large amount of resolve in completing 60 mental health sessions (both individually and in a group format) as well as fully and carefully completing numerous homework assignments." *Id.* He concluded that "SrA

Turtu's documented growth and positive ongoing mental health treatment progress reflect[] early steps to change which typically are the precursors to a long-term positive prognosis trajectory from a rehabilitative perspective." *Id.*

Two non-commissioned officers and several civilians attested to SrA Turtu's character. Def. Exs. B–G. For example, the non-commissioned officer in charge of the Aerospace Propulsions section of the SrA Turtu's unit characterized SrA Turtu as an above-average performer with a remarkably positive attitude even while awaiting trial. Def. Ex. B. SrA Turtu's squadron commander, Lieutenant Colonel BA, testified as a defense sentencing witness. Trial Tr. 162–71. When asked, "[I]n your opinion as the commander, was there any significant adverse impacts on the unit directly and immediately resulting from Airman Turtu's actions in December," he replied, "Not that I know of, no." *Id.* at 168.

SrA Turtu entered into a plea agreement under which he would be sentenced to a total term of confinement of six to twenty-four months and receive "at least" a bad-conduct discharge. App. Ex. VII. The military judge adjudged a sentence of reduction to the grade of E-1, twenty-four months of confinement for each of the four specifications to run concurrently, and a dishonorable discharge. Trial Tr. 292. The reduction in grade has been remitted. Convening Authority's Action on Decision.

Argument

Assignment of Error I

The portion of the sentence providing for a dishonorable discharge instead of a bad-conduct discharge is inappropriately severe.

A. Standard of Review

This Court reviews de novo the appropriateness of an appellant's sentence. *United States v. Cabuhat*, 83 M.J. 755, 770 (A.F. Ct. Crim. App. 2023) (en banc), *petition denied*, 84 M.J. 275

(C.A.A.F. 2024).

B. Law and Analysis

This case—in which every finding of guilty was for an offense occurring between 24 November and 26 December 2022—is subject to this Court's sentence appropriateness review authority under the version of Article 66(d)(1), UCMJ, enacted by section 542(b) of the William M. (Mac) Thornberry NDAA FY 2021, Pub. L. No. 116-283, 134 Stat. 3388, 3611 (2021).[5] Under that standard, 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." *Id.* at § 542(b), 134 Stat. at 3611.

Both Congress and the President have directed that the punishment imposed by a court-martial "shall" be "sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces." UCMJ art. 56(c)(1), 10 U.S.C. § 856(c)(1); Rule for Courts-Martial (R.C.M.) 1002(f), *Manual for Courts-Martial, United States* (*MCM*) (2019 ed.). Article 56(c)(1) and R.C.M. 1002(f) are phrased in the imperative. That direction was first introduced into the UCMJ by the Military Justice Act of 2016. NDAA for FY 2017, Pub. L. No. 114-328, § 5301, 130 Stat. 2000, 2919 (2016).[6] President Trump, acting under both delegated authority from Congress and his constitutional authority as President of the United States, added

[5] The amendment of Article 66 enacted by section 539E of the NDAA for FY 2022, Pub. L. No. 117-81, § 539E, 135 Stat. 1541, 1700 (2021), applies only to cases in which all findings of guilty are for offenses occurring after December 27, 2023. *Id.* at § 539E(f), 135 Stat. at 1706. Hence, that amendment is inapplicable to this case. The amendment of Article 66 enacted by section 544 of the James M. Inhofe NDAA for FY 2023 did not affect subsection (d)(1). Pub. L. No. 117-263, § 544, 136 Stat. 2395, 2582 (2022).

[6] The Military Justice Act of 2016 is division E of the NDAA for FY 2017. NDAA for FY 2017, Pub. L. No. 114-328, § 5001, 130 Stat. at 2894.

that concept to the R.C.M.s via a 2018 executive order. Exec. Order No. 13825 of March 1, 2018, 83 Fed. Reg. 9889, 9889, 10014 (Mar. 8, 2018).

In this case, where the sentence includes confinement for twenty-four months and reduction to the grade of E-1, a dishonorable discharge rather than a bad-conduct discharge is not "necessary" to promote justice or to maintain good order and discipline in the armed forces. It is, therefore, inappropriately severe.

The word "necessary" as used in both Article 56(c)(1) and R.C.M. 1002(f) means "essential." *Necessary*, BLACK'S LAW DICTIONARY (12th ed. 2024).[7] It is not "essential" to either promote justice or maintain good order and discipline that SrA Turtu's sentence include confinement for twenty-four months and a dishonorable discharge rather than confinement for twenty-four months and a bad-conduct discharge. The latter sentence would still constitute severe punishment. A bad-conduct discharge adjudged by a general court-martial is a statutory bar to veterans' benefits. 38 U.S.C. § 5303(a). Additionally, as this Court has recognized, a bad-conduct discharge imposes "a long-term stigma" on its recipient. *United States v. Parra*, No. ACM S32653, 2021 CCA LEXIS 653, at *38 (A.F. Ct. Crim. App. Dec. 2, 2021).

Both the applicable version of Article 53(c)(1) and R.C.M. 1002(f) identify four factors to consider in determining what sentence is "sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces." The first factor is "the nature and circumstances of the offense and the history and characteristics of the accused." UCMJ art. 56(c)(1)(A); R.C.M. 1002(f)(1). While SrA Turtu's offenses were unquestionably serious, they

[7] *See also* Merriam-Webster online, defining "necessary" as "absolutely needed : REQUIRED." Merriam-Webster.com/dictionary/necessary, last accessed 6 Oct. 2025; *Necessary*, 10 OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("Indispensable, requisite, essential, needful; that cannot be done without.").

do not make a dishonorable discharge "necessary." A dishonorable discharge is a more severe punishment than a bad-conduct discharge. R.C.M. 1003(b)(8)(C); *United States v. Mitchell*, 58 M.J. 446, 448 (C.A.A.F. 2003) ("in history, practice and law, a dishonorable discharge is more severe than a bad-conduct discharge"). That additional severity is not a "necessary" punishment in this case; rather, a bad-conduct discharge is "sufficient." UCMJ art. 56(c)(1)(A); R.C.M. 1002(f)(1). A bad-conduct discharge would remove SrA Turtu from the Air Force while imposing lifelong stigmatization. More is not "necessary." UCMJ art. 56(c)(1)(A); R.C.M. 1002(f)(1).

The second factor is "the impact of the offense on . . . the financial, social, psychological, or medical well-being of any victim of the offense" and on "the mission, discipline, or efficiency of the command of the accused and any victim of the offense." UCMJ art. 56(c)(1)(B); R.C.M. 1002(f)(2). Significantly, the victims' Article 6b representative opposed a court-martial and noted SrA Turtu's substantial steps toward rehabilitation between the offenses and the trial. MT Memorandum for 19 AW/JA, Subject: Opportunity to Submit Views on Disposition (1 Aug. 2023); Court Ex. A; Trial Tr. 243–47. Thankfully, she also reported that the victims "have not had lasting impacts" from the offenses and have "recovered fully from any injuries with no lingering or lasting complications." Court Ex. A. Nor did the offenses affect the mission, discipline, or efficiency of SrA Turtu's command, as established by his squadron commander. Trial Tr. 168.

From a financial perspective it is difficult to predict the level of impact on the victims of SrA Turtu receiving a bad-conduct discharge versus a dishonorable discharge. It stands to reason, however, that if the dishonorable discharge were reduced to a bad-conduct discharge, SrA Turtu would be in a better position to obtain employment with higher compensation that would allow him to increase the financial support for his children now that he has been released from confinement.

The third factor is the need for the sentence to reflect the seriousness of the offense; promote respect for the law; provide just punishment for the offense; promote adequate deterrence of misconduct; protect others from further crimes by the accused; rehabilitate the accused; and provide, in appropriate cases, the opportunity for retraining and returning to duty to meet the needs of the service. UCMJ art. 56(c)(1)(C); R.C.M. 1002(f)(3). Particularly when coupled with two years of confinement, a dishonorable discharge rather than a bad-conduct discharge is not "necessary" to reflect the seriousness of the offenses. The deprivation of liberty for two years is, itself, a serious sentence that appropriately reflects the seriousness of the offenses. It is not "necessary" to couple that deprivation of liberty with a dishonorable discharge rather than a bad-conduct discharge to reflect the offenses' seriousness.

Nor is a dishonorable discharge "necessary" to "promote respect for the law"—a goal that the confinement portion of the sentence alone accomplishes, even more so if paired with a bad-conduct discharge. Nor is a dishonorable discharge "necessary" to provide a just punishment. Had the military judge adjudged a sentence of confinement for two years and a bad-conduct discharge, it would have been viewed as an appropriately severe, just sentence. A dishonorable discharge does nothing to protect others from further crimes by SrA Turtu, a goal that was served by the confinement portion of the sentence but that was also furthered by the considerable steps SrA Turtu had already taken toward rehabilitation before his trial. *See* MT Memorandum for 19 AW/JA, Subject: Opportunity to Submit Views on Disposition (1 Aug. 2023); Def. Exs. C, I, J, M; Trial Tr. 244, 264–65. Imposing a punitive discharge is not reasonably related to SrA Turtu's rehabilitation; a dishonorable rather than bad-conduct discharge is certainly not "necessary" to achieve that goal. Finally, the plea agreement required SrA Turtu's separation from the Air Force with a punitive discharge, App. Ex. VII, rendering the opportunity for retraining and returning to

duty inapplicable.

The final factor looks at "the sentences available" at a court-martial. UCMJ art. 56(c)(1)(D); R.C.M. 1002(f)(4). Either a dishonorable discharge or a bad-conduct discharge was an "available" sentence. A dishonorable discharge is not "necessary" for purposes of this factor because of the availability of a bad-conduct discharge instead. Either would separate SrA Turtu from the Air Force; either would cut off his veterans' benefits; either would impose a lifetime stigma. A bad-conduct discharge is the form of punitive discharge that is "sufficient, but not greater than necessary." UCMJ art. 56(c)(1); R.C.M. 1002(f).

The portion of the sentence providing for a dishonorable discharge rather than a bad-conduct discharge violates Article 56(c)(1) and R.C.M. 1002(f). A sentence imposed in violation of those provisions' "not greater than necessary" edict is not "correct in law" and, therefore, may not be affirmed upon review under the applicable version of Article 66(d)(1)(A). Art. 66(d)(1)(A), UCMJ, 10 U.S.C. § 866(d)(1)(A) ("The 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.").

This Court should, therefore, affirm a sentence of confinement for twenty-four months and a bad-conduct discharge.

Assignment of Error II

The post-trial processing error and resulting unreasonable delay warrant sentencing relief pursuant to Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

A. Additional Facts

Prosecution Exhibit 1 is a stipulation of fact. Pros. Ex. 1. The special trial counsel explained that Attachment 4 to Prosecution Exhibit 1 is a recording of a pretextual telephone call between MT and SrA Turtu dated 6 January 2023, lasting 1 hour, 43 minutes, and 32 seconds. Trial Tr. 22.

The trial counsel relied on portions of that recording during sentencing argument. *Id.* at 273; App. Ex. XIX, slides 9–12, 14.

When this case was originally docketed with this Court, more than half of Prosecution Exhibit 1, Attachment 4 could not be played. *See Turtu*, 2025 CCA LEXIS 300, at *1. Nor could appellate defense counsel play three police body camera recordings that constituted Prosecution Exhibit 1, Attachment 9, in the original record of trial. *Id.*

This Court concluded that "[t]he original record of trial is not complete." *Id.* at *4. This Court explained that the "missing material was attached to the stipulation of fact, which the military judge considered before accepting Appellant's guilty plea and adjudging the sentence." *Id.* Thus, "[w]hether the findings of guilty were correct in law, and whether the sentence was correct in law or inappropriately severe, depends in part on the evidence that was provided to the military judge, including the stipulation of fact and its attachments." *Id.* This Court therefore found "it appropriate to remand the record for correction in accordance with the procedures prescribed by R.C.M. 1112." *Id.* Forty-six days passed from when this Court issued that remand order until the record's redocketing with this Court. *Compare id.*, *with United States v. Turtu*, No. ACM 40649 (f rev) (A.F. Ct. Crim. App. Aug. 15, 2025) (notice of docketing).

B. Standard of Review

This Court necessarily reviews the appropriateness of providing relief under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), de novo.

C. Analysis

Article 66(d)(2), UCMJ, authorizes this Court to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record." Here, this Court has already determined that there was a post-trial

processing error when it found that the record of trial the Government submitted for docketing was incomplete. *Turtu*, 2025 CCA LEXIS 300, at * 1. Moreover, that error caused unreasonable delay by necessitating a remand. Time required to cure the Government's error is unreasonable delay because the Government's provision of an incomplete record to this Court was itself unreasonable.

The Government's practice of providing incomplete records of trial to this Court for docketing is all too common. This was one of at least eleven cases in which this Court was compelled to remand a record for correction during Fiscal Year 2025.[8] In one additional case, this Court set aside the findings and sentence because of deficiencies in the record of trial the Government submitted to this Court for docketing. *United States v. Titus*, No. ACM 40557, 2025 CCA LEXIS 146 (A.F. Ct. Crim. App. Apr. 7, 2025).

This case is yet another example of the "[p]ost-trial processing errors" that this Court has found to be "a systemic problem indicating institutional neglect." *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. June 7, 2024), *aff'd*, 85 M.J. 361 (C.A.A.F. 2025). Article 66(d)(2), UCMJ, makes this Court the guardian of accurate post-trial processing in the Department of the Air Force. This Court should exercise the authority Congress gave it to provide appropriate relief for erroneous post-trial processing,

[8] *See also United States v. Mabida*, No. ACM 40682 (A.F. Ct. Crim. App. Sep. 2, 2025) (order) (included in contemporaneously filed motion to attach); *United States v. Pettigrew*, No. ACM 40790 (A.F. Ct. Crim. App. Sep. 2, 2025) (order) (included in contemporaneously filed motion to attach); *United States v. Bush*, No. ACM 40783, 2025 CCA LEXIS 394 (A.F. Ct. Crim. App. Aug. 21, 2025) (order); *United States v. Hooker*, No. ACM 40646 (A.F. Ct. Crim. App. July 9, 2025) (order) (included in contemporaneously filed motion to attach); *United States v. Robinson*, No. ACM 24044, 2025 CCA LEXIS 259 (A.F. Ct. Crim. App. June 6, 2025) (order); *United States v. Anderson*, No. ACM 40654, 2025 CCA LEXIS 204 (A.F. Ct. Crim. App. May 8, 2025) (order); *United States v. Kindred*, No. ACM 40607, 2025 CCA LEXIS 147 (A.F. Ct. Crim. App. Apr. 7, 2025) (order); *United States v. Burkhardt-Bauder*, No. ACM 24011, 2025 CCA LEXIS 81 (A.F. Ct. Crim. App. Feb. 19, 2025) (order); *United States v. Martinez*, No. ACM 39903 (reh), 2024 CCA LEXIS 551 (A.F. Ct. Crim. App. Dec. 16, 2024) (order); *United States v. Covitz*, No. ACM 40139 (reh), 2022 [sic] CCA LEXIS 751 (A.F. Ct. Crim. Dec. 6, 2024) (order).

thereby encouraging the Government to overcome its continued institutional neglect in ensuring accurate post-trial processing.

One important factor this Court considers when determining whether to grant relief for such institutional neglect is whether, "[g]iven the passage of time," this Court can "provide meaningful relief." *Valentin-Andino*, 2024 CCA LEXIS 223, at *14 (quoting *United States v. Gay*, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015), *aff'd*, 75 M.J. 264 (C.A.A.F. 2016)). Given the passage of time, confinement relief is no longer available because SrA Turtu was released from confinement on 7 September 2025. Prisoner Release Order, TURTU, GAVIN D., Receipt (7 Sep. 2025) (redacted copy included in contemporaneously filed motion to attach). It is still possible to "provide meaningful relief" in the form of reduction of the adjudged dishonorable discharge to a bad-conduct discharge. For the reasons discussed in Assignment of Error I, above, such relief would not be a windfall; rather, a bad-conduct discharge when paired with the confinement SrA Turtu has already served would be a substantial sentence that also properly reflects his rehabilitative strides.

This Court should, therefore, affirm a sentence of confinement for twenty-four months and a bad-conduct discharge.

Respectfully submitted,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[redacted]

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Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION TO ATTACH DOCUMENTS**
v.	)	Before Panel 2
Senior Airman (E-4) **GAVIN D. TURTU** United States Air Force, *Appellant.*	)	No. ACM 40649 (f rev)
	)	14 October 2025

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

COMES NOW Appellant, Senior Airman Gavin D. Turtu, by and through his undersigned counsel, and moves pursuant to Rule 23.3(b) of this Honorable Court's Rules of Practice and Procedure to attach documents.

Appellant seeks to attach three orders of this Court and one prisoner release order, all of which are relevant to Assignment of Error II in Appellant's brief, which concerns post-trial processing error.

The Court of Appeals for the Armed Forces' *Jessie* decision does not limit this Court's authority to supplement the record when considering a request for relief under Article 66(d)(2), Uniform Code of Military Justice, 10 U.S.C. § 866(d)(2). *See United States v. Jessie*, 79 M.J. 437, 444 (C.A.A.F. 2020). Unlike the sentence appropriateness provision of the version of Article 66 that the Court of Appeals for the Armed Forces construed in *Jessie*, Article 66(d)(2) does not limit the basis for relief to "the entire record." Rather, it authorizes this Court to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c)." UCMJ art. 66(d)(2), 10 U.S.C. § 866(d)(2). The materials Appellant seeks to attach will inform this Court's judgment as to whether relief is "appropriate."

One factor this Court has identified as relevant when determining the appropriateness of relief is "any evidence of institutional neglect concerning timely post-trial processing, either across the service or at a particular installation." *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *14–15 (A.F. Ct. Crim. App. June 7, 2024), *aff'd*, 85 M.J. 361 (C.A.A.F. 2025) (quoting *United States v. Gay*, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015), *aff'd*, 75 M.J. 264 (C.A.A.F. 2016)). Answering that question requires considering information from outside the record of a given case.

Appellant seeks to attach the following:

1. *United States v. Mabida*, No. ACM 40682 (A.F. Ct. Crim. App. Sep. 2, 2025) (order).
2. *United States v. Pettigrew*, No. ACM 40790 (A.F. Ct. Crim. App. Sep. 2, 2025) (order).
3. *United States v. Hooker*, No. ACM 40646 (A.F. Ct. Crim. App. July 9, 2025) (order).
4. Prisoner Release Order, TURTU, GAVIN D. (redacted).

The orders of this Court attached as documents 1 through 3 are relevant to demonstrate a systemic problem of the Government submitting incomplete records of trial to this Court for docketing.

The prisoner release order attached as document 4 is relevant to determining what "meaningful relief" is available—a factor this Court has identified as a consideration in determining whether to grant relief for post-trial processing errors. *Valentin-Andino*, 2024 CCA LEXIS 223, at *15 (quoting *Gay*, 74 M.J. at 744).

For the foregoing reasons, this Court should grant this motion.

Respectfully submitted,

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Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[redacted]
Dwight H. Sullivan
Air Force Appellate Defense Division

21 October 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Senior Airman (E-4) GAVIN D. TURTU, USAF, *Appellant*.	)))))))))	OPPOSITION TO MOTION TO ATTACH DOCUMENTS Panel 2 ACM 40649 (f rev)

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

Pursuant to Rules 23(c) and 23.3(b) of this Court's Rules of Practice and Procedure, the United States respectfully requests this Honorable Court deny Appellant's Motion to Attach Documents, dated 14 October 2025.

In Assignment of Error II in his brief to this Court, Appellant claims that "post-trial processing error and resulting unreasonable delay warrant relief pursuant to Article 66(d)(2), UCMJ." (App. Br. at 11.) Appellant requests this Court reduce his adjudged dishonorable discharge to a bad-conduct discharge. As part of his claim, Appellant seeks to attach documents from three separate cases, United States v. Mabida and United States v. Pettigrew, and United States v. Hooker, as well as Appellant's own release order from confinement. The Government does not oppose the attachment of Appellant's release order.

However, the Government does oppose the attachment of the documents from the three separate cases. The United States' contends that it is not necessary to attach this Court's orders in other cases to the record. Filing motions to attach creates unnecessary litigation for all parties and the Court. The parties can simply cite those orders by case name, date, and ACM number in its brief.

To this point, when citing to newly released court opinions from this Court that are not yet available on LEXIS, parties' appellate briefs submitted to this Court typically do not involve seeking to attach this Court's opinions in those separate case to the case at hand's record. Instead, recognizing that those opinions will inevitably be listed on LEXIS in short order, parties typically cite the opinion recognizing this Court has the ability to access its own opinions even if they are not yet listed on LEXIS. The same should hold true in this instance.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's motion to attach documents.

[redacted]
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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 21 October 2025 via electronic filing.

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40649 (f rev)**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Gavin D. TURTU	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 14 October 2025, Appellant moved this court to attach the following documents to the record of trial: three orders of this court,* and one Prisoner Release Order of Appellant (redacted). Appellant avers that these documents are relevant to his second assignment of error claim of post-trial processing error. The Government opposes the motion to attach the three court orders but does not oppose the motion to attach the Prisoner Release Order.

The court has considered Appellant's motion, the Government's opposition, and the applicable law. The court grants Appellant's motion to attach only the Prisoner Release Order of Appellant (redacted); however, it specifically defers consideration of the applicability of *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), and related case law, to the attachment until it completes its Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's entire case.

Accordingly, it is by the court on this 24th day of October, 2025,

ORDERED:

Appellant's Motion to Attach Documents is **GRANTED IN PART**.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

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* *United States v. Mabida*, No. ACM 40682 (A.F. Ct. Crim. App. Sep. 2, 2025) (order); *United States v. Pettigrew*, No. ACM 40790 (A.F. Ct. Crim. App. Sep. 2, 2025) (order); and *United States v. Hooker*, No. ACM 40646 (A.F. Ct. Crim. App. July 9, 2025) (order).

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 2
Senior Airman (E-4) **GAVIN D. TURTU** United States Air Force *Appellant.*	)	No. ACM 40649 (f rev) 13 November 2025

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

ISSUES PRESENTED

I.

THE PORTION OF THE SENTENCE PROVIDING FOR A DISHONORABLE DISCHARGE INSTEAD OF A BAD-CONDUCT DISCHARGE IS INAPPROPRIATELY SEVERE.

II.

THE POST-TRIAL PROCESSING ERROR AND RESULTING UNREASONABLE DELAY WARRANT APPROPRIATE SENTENCING RELIEF PURSUANT TO ARTICLE 66(d)(2), UNIFORM CODE OF MILITARY JUSTICE, 10 U.S.C. § 866(d)(2).

STATEMENT OF CASE

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

STATEMENT OF FACTS

Specifications 2-3

Appellant's wife, MT, gave birth to two premature baby girls, LT and ST, on 24 November 2022. (Pros. Ex. 1.) LT suffered from acid reflux, and ST had a heart condition. (R.

at 33.) MT and Appellant also have an older child, CT. (Pros. Ex. 1.) On or about 16 December 2022, MT and Appellant took their 15-days' old infants to MT's sister's house in Galva, Kansas. (Id., R. at 33.) MT's sister and brother-in-law also have small children, and the house was frequently noisy. (R. at 33.) LT and ST would cry often. (Id.) While staying at MT's sister's home, Appellant took both LT and ST upstairs to change their diapers. (Pros. Ex. 1, R. at 33.) Appellant changed LT's diaper first, since she was the smaller of the two babies, and she was screaming. (Id.) Appellant held LT down with a force of 8 out of 10, using his left hand to hold her chest and press down against her ribs. (Pros. Ex. 1, R. at 34.) Appellant then changed ST, using the same position with his left hand to hold her in place, his thumb and pinky straddling her rib cage. (Pros. Ex. 1, R. at 61.) Appellant applied more force than was necessary. (Id.)

About 10 days later, on or about 26 December 2022, Appellant and MT returned to their on-base housing in Little Rock, Arkansas. (R. at 34-35.) Appellant had driven the family from Kansas to Arkansas. (R. at 35.) Appellant and MT agreed that Appellant would take the infants upstairs to change their diapers while MT prepared bottles and cared for their toddler. (Id.) Again, Appellant changed LT first. (Id.) Because LT was crying, Appellant's frustration grew, and he increased the amount of pressure he used to hold her down. (Id.) Later it was discovered that LT had 10 broken ribs, and ST had 8 broken ribs. (Pros. Ex. 1.) LT also suffered a laceration to her liver, and ST suffered a large bruise on her torso. (Id.) Dr. SC, an expert in pediatric abuse, explained that infant ribs are difficult to break because they are more cartilage and have not yet become rigid. (R. at 119.) Col (Dr.) BB also examined the medical records of LT and ST and opined that the rib fractures "are very highly associated with abusive trauma in otherwise healthy children, given that the significant amount of force needed to produce them far exceeds the forces involved in normal, reasonable handling of an infant." (Pros. Ex. 1.) Col BB

further opined that, "[LT's] intraabdominal injury is concentrated to the upper abdomen makes a single, violent strike to the abdomen the most likely cause of the liver laceration." (Id.)

During the plea colloquy, Appellant admitted to the military judge that he was not forced or compelled to inflict unlawful force upon LT or ST (R. at 69); had no justification or excuse (R. at 61); and could have avoided it if he wanted to. (R. at 54.)

Specifications 4-5

While still visiting MT's family in Galva, Kansas, on a date different than the incident captured in Specification 3, Appellant was holding ST while she was crying. (R. at 72.) Appellant lost patience and slapped ST across the face with an open palm. (Id.) Appellant specifically admitted, "[ST] cried even louder at that point, so I know it hurt her." (Id.) Later that same evening, Appellant noticed a bruise forming on ST's face where he had struck her. (R. at 73.)

On or about 26 December 2022, the same day Appellant and MT returned with their family to Little Rock, Arkansas and the same date Appellant again forcefully applied pressure to LT's chest while changing her diaper, MT walked into the room while Appellant was changing LT. (R. at 80-81.) MT saw Appellant make a swinging motion with his hand and strike LT across the face, hitting LT on the right side of her face toward the top of her head. (R. at 81.) MT immediately intervened, taking LT away from Appellant and calling 911. (Id., Pros. Ex. 1.) It was later discovered that LT and ST both suffered subconjunctival hemorrhages, a collection of blood on the white of the eye. (R. at 114-115, 122.)

During the plea colloquy, Appellant admitted to the military judge that he was not forced or compelled to strike LT or ST (69); had no justification or excuse (R. at 61); and could have avoided it if he wanted to. (R. at 54.)

Additional harms to LT and ST by Appellant

Appellant on at least one occasion, smothered LT or ST's faces into his shoulder or aggressively patted their backs when they would cry. (Pros. Ex. 1.) On another occasion, when LT was resisting feeding from a bottle, Appellant forcibly restrained her head. (Id.) On another occasion, Appellant carried the newborns under his arm like footballs, stacking them on top of each other and applying pressure to them underneath his shoulder and between his arm and rib cage. (Id., R. at 172.) According to family members, Appellant intentionally restricted their access to LT and ST, for instance denying offers to assist with LT and ST and denied them entry to the room where the infants were staying. (Pros. Ex. 1.)

Arrest through sentencing

When MT called 911 after witnessing Appellant strike LT on the face and head with his hand, law enforcement arrived. (Id.) Appellant spoke with the responding officer, admitting to striking LT but denying striking ST—stating he did not know where the bruise on ST's face had come from. (Id.) Appellant was arrested and transported to the local jail. (Id.) Once there, he professed ignorance regarding what caused ST and LT to have broken ribs. (Id.) Between release from pretrial confinement and the start of trial, Appellant engaged with several different therapy programs offered by Family Advocacy, including parenting classes, anger management, and meeting in group and individual therapy sessions. (Def. Ex. i-m.) Appellant moved back into the home with MT and their three minor children in July 2023. (R. at 244.) MT testified that she now trusts Appellant to watch ST and LT unsupervised and has not seen any recurring misconduct. (R. at 245.)

Appellant entered into a plea agreement 21 March 2024, agreeing to plead guilty to Specifications 2-5 in exchange for a sentencing range of 6-24 months to run concurrently and at

least a bad-conduct discharge. (App. Ex. VII.) Further, Specification 1 for domestic violence by causing grievous bodily harm, to wit the laceration of LT's liver, was to be withdrawn and dismissed with prejudice upon announcement of sentence and before the court-martial was adjourned. (Id.) There were no other limitations on sentencing. (Id.)

Ultimately, Appellant's plea of guilty to Specifications 2-5 were accepted and the military judge considered all matters presented during the sentencing proceedings. (R. at 104.) Ultimately, the military judge sentenced Appellant to 24-months confinement, reduction to E-1, and a dishonorable discharge (DD). (R. at 292.) Following submission of clemency matters, Appellant's reduction was remitted, and automatic forfeitures were suspended. (Entry of Judgment, ROT, Vol. 1.)

ARGUMENT

I.

APPELLANT AGREED A DISHONORABLE DISCHARGE MAY BE APPROPRIATE, AND IT 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). This Court has the statutory duty to "independently determine, in every case within [its] limited Article 66, UCMJ, jurisdiction, the sentence appropriateness of each case [it] affirm[s]." United States v. Baier, 60 M.J. 382, 384–85 (C.A.A.F. 2005) (alterations in original).

Law and Analysis

Pursuant to Article 66(d), UCMJ, 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." 10 U.S.C. § 866(d). The purpose of such review is "to ensure 'that justice is done and that the accused gets the punishment he deserves.'" United

States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994) (quoting United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988)).

In assessing sentence appropriateness, this Court considers "the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." United States v. Hamilton, 77 M.J. 579, 587 (A.F. Ct. Crim. App. 2017) (citations omitted). "The power to review the entire record includes the power to consider the allied papers, as well as the record of trial proceedings." United States v. Hutchison, 57 M.J. 231, 234 (C.A.A.F. 2002). The Court also considers the "limits of the [plea agreement] that the appellant voluntarily entered into with the convening authority." United States v. Fields, 74 M.J. 619, 626 (A.F. Ct. Crim. App. 2015).

Although this Court has discretion to determine whether a sentence is appropriate, it has "no power to 'grant mercy.'" 77 M.J. at 587 (citing United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010)); *see also* United States v. Walters, 71 M.J. 695, 698 (A.F. Ct. Crim. App. 2012) ("[W]e are not authorized to engage in exercises of clemency."). Thus, as long as a sentence is not inappropriately severe, this Court may affirm it even if it is not what this Court would have adjudged:

> By affirming a sentence, we do not necessarily mean that it is the sentence we would have adjudged had we been the sentencing authority. The numerous permutations and combinations of sentencing alternatives available to the sentencing authority are so broad that, normally, there will not be only one sentence that is appropriate for a particular appellant. Thus, it may be more fitting for this Court to find that a particular sentence "is not inappropriate," rather than "is appropriate."

Joyner, 39 M.J. at 966.

Here, Appellant asks this Court to downgrade his DD to a bad-conduct discharge because it is "inappropriately severe." (App. Br. at 8). For the reasons discussed below, Appellant's sentence to a DD is not inappropriately severe, and this Court should affirm the sentence.

A. Given Appellant's crime and the absence of extenuating or mitigating circumstances, the DD was appropriate.

Even though Appellant agreed to a DD as a potential outcome in his plea agreement, he now contends that it is "severe" and "not necessary." (App. Br. at 8-10). As support, Appellant cites the same evidence offered at sentencing proceedings, or through clemency, namely his service in the Air Force, his ongoing treatment, the victims' recovery, and the support of the Article 6b representative. (App. Br. at 7-11). Appellant uses speculation to support his position, conceding that "it is difficult to predict the level of impact on the victims of SrA Turtu receiving a bad-conduct discharge verses a dishonorable discharge." (App. Br. at 9). Nothing Appellant offers is compelling extenuation or mitigation evidence sufficient to reduce the DD to a bad-conduct discharge; therefore, this Court should not grant sentencing relief.

To start, Appellant's good conduct in the workplace means little when one considers that he forcibly crushed the ribs of his infant daughters and struck them on the head when they were approximately 4-weeks old, causing 18 broken ribs and hemorrhaging to their eyes. The gravity of his behavior is heightened by the fact that this was not Appellant's first child nor his first time taking care of an infant. He was not facing these struggles, sleep deprivation, and parental responsibility for the first time. He was also not facing these struggles in isolation, but was surrounded by family members ready and willing to help lift the burden. Appellant discussed this during the plea colloquy, "I should have asked for help and had someone assist with their changing to give myself distance," (R. at 34) and that Appellant was staying in MT's sister and brother-in-law's house with all their respective children. (R. at 33-34.) Appellant also stipulated

that other family members perceived him as limiting their access to LT and ST, even when offering help. (Pros. Ex. 1.) A 4-week-old infant is small and helpless enough, LT and ST were additionally fragile because they were premature, born at 36-weeks, and suffered from acid reflux and a heart condition respectively. (R. at 33.)

Appellant has not presented any extenuating evidence to explain the circumstances surrounding brutally assaulting his infant daughters. In fact, during this plea inquiry, Appellant explicitly acknowledged what he did was wrong (R. at 35), he could have avoided doing it if he wanted to (R. at 54), and nothing gave him an excuse or justification for crushing his infant daughters until their ribs broke or striking them on their heads with his hand. (R. at 61.) Further compounding the futility of Appellant's position is the lack of compelling mitigation evidence that would justify lessening his punishment. Though "evidence of the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any other trait that is desirable in a servicemember" may constitute matters in mitigation, every appellant's record must be put into its proper context. R.C.M. 1001(d)(1)(B). Here, Appellant availed himself of treatment and programs only *after* his arrest. In other words, his dedication to bettering himself was only triggered *after* he was caught, *after* the extent of the infants' injuries were known, and *after* he was confronted with his false statement to police denying the origin of the bruise on ST's face. This is despite, as mentioned above, Appellant admitting that he knew what he had done was wrong when he was doing it. What Appellant has presented are not "particular acts of good conduct or bravery" or reputation for "efficiency, fidelity, subordination, temperance, [or] courage" that warrant sentence relief. R.C.M. 1001(d)(1)(B).

Equally uncompelling are Appellant's attempts to portray his ongoing therapy and self-improvement as grounds for relief. (App. Br. at 9). The fact that Appellant has attempted to

become better *after* he committed the violent offenses against his own infants and *after* he was confronted with the extent of his violence does not somehow make the sentence less appropriate. If anything, his ongoing dedication to rehabilitation and deterrence shows that the sentence is having its intended effects. While Appellant has clearly struggled with anger and violence, and must continue to manage his emotions through his life, his completion of parenting and anger courses and participation in therapy do not excuse, explain, or minimize the violent striking and crushing of two 4-week old infants in his care. Nothing presented by Appellant rises to sufficient matters in mitigation or extenuation. Therefore, this Court should not grant relief.

B. The possibility of a DD was a bargained-for benefit under the plea agreement.

Plea bargains are compromises between the Government and the accused that are informed by society's "powerful and legitimate interest in punishing the guilty, an interest shared by the [Government] and the victims of crime alike." Shinn v. Ramirez, 596 U.S. 366, 377 (2022). This interest is why the Government might accept a negotiated plea to one offense and withdraw another offense if an accused is willing to agree to certain punishment—to ensure that the accused will be held accountable and that victims will see justice done. Such plea bargains are "important components of this country's criminal justice system." Bordenkircher v. Hayes, 434 U.S. 357, 361 (1978). And when "[p]roperly administered, they can benefit all concerned." Id. at 362. This Court must consider such plea agreements when framing sentence appropriateness review. See 10 U.S.C. § 866(d). Absent this context, this Court would be forced to evaluate certain sentences in a vacuum, which could lead to serious miscarriages of justice.

As a starting point, "accused's own sentence proposal is a reasonable justification of its probable fairness to him." Fields, 74 M.J. at 625. Appellant knowingly and voluntarily entered into a plea agreement which included a provision that the military judge "must *at least* adjudge a

bad-conduct discharge." (App. Ex. VII) (emphasis added). Appellant pled guilty to two specifications of domestic violence for inflicting grievous bodily harm upon ST and LT, and two specifications of domestic violence for inflicting bodily harm upon ST and LT. (Id.) As discussed on the record, the maximum punishment based solely on his plea to the offenses for which he pled guilty was: a DD, 32 years of confinement, reduction to the grade of E-1, total forfeitures, and a reprimand. (R. at 84-85.) Through the plea agreement, the potential sentence was significantly reduced to 6-24 months of confinement, with all periods of confinement to run concurrently. (App. Ex. VII.) Appellant was ultimately sentenced to 24months of confinement, a DD, and reduction to E-1. (Entry of Judgement, ROT, Vol. 1.) The automatic forfeitures were waived to the fullest extent possible to provide for Appellant's dependent children and the reduction in rank was suspended for six months and thereafter remitted. (Id.)

This was not the only benefit Appellant received from the plea agreement. Another provision required the government to withdraw and dismiss with prejudice a specification of domestic violence by inflicting grievous bodily harm upon LT, causing laceration of her liver. (Id., App. Ex. VII.) This Specification alone carries a maximum punishment of a DD, 11 years of confinement, total forfeitures, and reduction to E-1.

The plea agreement is contained in the record, and the military judge and Appellant discussed the provision regarding the possibility of punitive discharges. (R. at 97-98.) The matter of which punitive discharge was appropriate was argued at length during sentencing proceedings. Government counsel argued that a DD was appropriate, while trial defense counsel acknowledged that a DD was an available punishment under the plea (R. at 279, 283) and argued that a bad-conduct discharge was sufficient. (R. at 280-283.) Appellant was fully aware of the possibility of either a bad-conduct discharge or a DD during sentencing and was afforded the full

opportunity to argue why a bad-conduct discharge was sufficient. Appellant's contention that a DD is unreasonably severe amounts to nothing more than disagreement with the sentence.

This Court must take into account matters in the entire record when evaluating sentence appropriateness. Failure to account for such nuances would be error, considering society's "powerful and legitimate interest in punishing the guilty." Shinn, 596 U.S. at 377. Because the public interest in justice informs plea agreements like the one in this case, this Court cannot properly review sentence appropriateness without considering how the agreement shaped the outcome. *See* 10 U.S.C. § 866(d); *see also* United States v. Arroyo, No. 24-0212, 2025 CAAF LEXIS 688 (C.A.A.F. Aug. 19, 2025).

Here, the plea agreement was the result of negotiation in the face of strong evidence, Appellant received significant benefits by reducing the maximum potential punishments available, and was fully advised on his rights as well as the ramifications of a DD. Simply put, the sentence is appropriate, and Appellant agreed so at trial. Accordingly, this Court should affirm the sentence.

C. The DD does not violate Article 53(c)(1) or R.C.M. 1002(f) and should be affirmed.

Article 53(c)(1) and R.C.M. 1002(f) current at the time of the offenses lay out factors for consideration in imposition of a sentence. Namely:

> (1) The nature and circumstances of the offense and the history and characteristics of the accused;
>
> (2) The impact of the offense on—
> (A) the financial, social, psychological, or medical well-being of any victim of the offense; and
> (B) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;
>
> (3) The need for the sentence to—
> (A) reflect the seriousness of the offense;
> (B) promote respect for the law;

(C) provide just punishment for the offense;
(D) promote adequate deterrence of misconduct;
(E) protect others from further crimes by the accused;
(F) rehabilitate the accused; and
(G) provide, in appropriate cases, the opportunity for retraining and returning to duty to meet the needs of the service; and

(4) The sentences available under these rules.

R.C.M. 1102(f), Manual for Courts-Martial, United States (MCM) (2019 ed.)

Appellant contends that, given the criteria above, the DD is not appropriate or necessary. (App. Br. at 7-11). This Court should not be persuaded, since the criteria above were appropriately weighed by the military judge in issuing sentencing and the criteria weigh in favor of affirming the DD.

The nature and circumstances of the offense support the DD

Specifications 2 and 3 charged Appellant with infliction of grievous bodily harm upon LT and ST, who were infants approximately 4-weeks old at the time of the offenses. (Charge Sheet, ROT, Vol. 1; R. at 275.) Grievous bodily harm means "a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." (R. at 32.) Grievous bodily harm was inflicted upon both LT and ST. Not only did Appellant admit that he had used force of "8 out of 10" (R. at 33-34) when holding down LT, he did the same thing to ST just a moment later (R. at 61). Appellant further stated he increased his forceful holding of LT's chest on a later occasion . (R. at 35.) Though Appellant stated he was not aware at the time he held down LT and ST that he had broken their ribs, an expert in child abuse pediatrics, Dr. RC, testified that an infant's ribs are more difficult to fracture than adult ribs. (R. at 119.) Breaking infant ribs required an excessive and violent degree of force. (R. at 120.) LT

had at least 10 rib fractures. (Id.) ST had 8 rib fractures and a large bruise on her chest. (Pros. Ex. 1.)

Those actions only accounted for Specifications 2 and 3. For Specifications 4 and 5, Appellant admitted to striking LT and ST forcefully on their heads. (R. at 75, 82.) The location and forcefulness that Appellant described was consistent with causing blood to collect in LT and ST's eyes (R. at 115, 122.) ST also had a large bruise on her left cheek. (R. at 122.) This was not a one-off incident with one child in one moment of emotional breaking. This was repeated and forceful violence applied to two infants in the same manner. Appellant had no justification or excuse, he had family near at hand to lend aid if he needed it, and he applied force likely to cause death upon LT and ST. The nature and circumstances do not reflect merely bad conduct. The facts reflect dishonorable, violent conduct against fragile infants. The DD was necessary to characterize Appellant's heinously violent conduct for what is was. Thus, a DD is appropriate and should be affirmed.

The impact of the offenses on the victims is significant and supports the DD

As if the infliction of force on two 4-week-old infants—force likely to cause death, resulting in 18 rib fractures and head trauma severe enough to cause blood pooling in their eyes—were not sufficient to demonstrate significant impact, the full extent of the physical, developmental, and psychological consequences will not be known for years. According to Dr. RC, these injuries may lead to long-term complications that remain latent and undetectable until later in life. (R. at 133.) Research shows that abuse during infancy carries a heightened and potentially life-long risk of developmental delays and adverse psychological outcomes. (Id.) Although ST and LT may not currently exhibit overt developmental impairments, they are still too young for a comprehensive psychological assessment. At the time of filing this Answer

Brief, neither child has reached the age of three. Based on scientific data and population-level risk factors cited by Dr. RC, both children face an elevated likelihood of adverse health outcomes and may require ongoing monitoring and specialized care. (Id.)

Until definitive diagnoses or outcomes emerge—which may take many years—the risk of long-term harm remains substantial. This Court should not base its decision solely on the apparent physical recovery from grievous bodily harm. It should not require even more catastrophic injury to two 4-week-old infants to justify a DD. The injuries sustained were undeniably severe, and the lasting impact on ST and LT cannot be precisely measured, except to acknowledge that such trauma significantly increases the risk of enduring developmental and psychological harm. Accordingly, a sentence of DD is warranted and should be affirmed.

The DD appropriately reflects the seriousness of the offenses, promotes respect for the law, and provides just punishment and adequate deterrence.

As discussed above, the injuries suffered by ST and LT were undeniably severe. A DD appropriately reflects the seriousness of the offenses by accurately capturing the excessive violence of the force applied to ST and LT as 4-week old infants. The military as a whole relies on public confidence and internal cohesion. When a servicemember commits an act as heinous as infant abuse, it damages the reputation of the armed forces and undermines morale within the ranks. While impact to good order and discipline or disgrace upon the armed forces are not elements for any crime here, they certainly are considerations for an appropriate sentence under R.C.M. 1002(f)(3). A DD is widely known as the worst service characterization, reserved only for certain convictions at a general court-martial. Affirming a DD sends a powerful message: the military does not tolerate acts of violence upon infants.

A DD further promotes respect for the law by issuing a just punishment for these offenses. The preamble to the MCM lays out the purposes of military justice are "to promote

justice, to deter misconduct, to facilitate appropriate accountability, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States." (MCM, Preamble) (2024 ed.). If a DD is unreasonably severe for inflicting grievous bodily harm upon not one but two 4-week old infants, it is difficult to imagine any violent offense short of murder which qualifies. It is a just punishment. The stigma which attaches is appropriate given these offenses. Appellant argues that a DD "does nothing to protect others from further crimes by SrA Turtu." (App. Br. at 10). This argument completely disregards the principle of general deterrence and respect for the law. It is not only Appellant's specific deterrence that matters, but the general deterrence of enforcing the standards expected of all servicemembers and enacting just punishment for severe, violent offenses. The DD serves the function of punishment, yes, but also as a powerful reminder of behavior which will absolutely not be tolerated.

By affirming this sentence, this Court would promote effectiveness in the military establishment and facilitate appropriate accountability for these offenses. By so doing, public perception and confidence in the military justice system's ability to promote justice would be satisfied. Based on these principles, the DD is appropriate and should be affirmed.

The DD was an available sentence and specifically agreed to as a potential outcome

Under R.C.M. 1102 (a)(2), "If the military judge accepts a plea agreement with a sentence limitation, the court-martial shall sentence the accused in accordance with the limits established by the plea agreement." As discussed above in section B., the availability of a DD was a term specifically included in the plea agreement. Appellant was under no misconception that a DD was a possible outcome and agreed to the terms of the plea agreement anyway. This acceptance of a DD as a possible outcome reflects an acceptance and agreement by Appellant

that a DD may be appropriate. Also discussed above, Appellant received significant benefit from the plea agreement, including but not limited to the withdrawal and dismissal of Specification 1 and the limitation of confinement to a maximum of 24 months. (App. Ex. VII.) These benefits were bargained-for and included the provision that a DD remain an option for the military judge in sentencing.

Additionally, under R.C.M. 1003(b)(8)(B), DD's are for "those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized in civilian jurisdictions as felonies." Child abuse through infliction of physical violence is a felony both under Kansas law (*See* Kansas Revised Statutes § 21-5602) and Arkansas law (*See* Arkansas Code § 5-27-205 (2020)) where Appellant described the offenses taking place. (R. at 70-73, 83-34.) Facially, under military and civilian law and based upon Appellant's conviction alone, a DD is both authorized and appropriate.

MT's statements are insufficient grounds for sentencing relief

Finally, Appellant relies on the statements of MT, the Article 6b representative for LT and ST, to support his request that the DD be downgraded. (App. Br. at 10). This cry for mercy on behalf of Appellant is distinct from this Court's responsibility to review for sentence appropriateness. This Court's sentence appropriateness review is aimed at "assuring that justice is done and that the accused gets the punishment he *deserves*." Healy, 26 M.J. at 395 (emphasis added). By contrast, "[c]lemency involves bestowing mercy—treating an accused with *less rigor than he deserves*." Id. at 395 (emphasis added). This responsibility for clemency "was placed by Congress in other hands"—those of the convening authority. Id. at 396. "Granting mercy for any reason or no reason is within the purview of the convening authority." *See* Nerad, 69 M.J. at 146.

Thus, while Appellant's ongoing rehabilitation and self-improvement and the support given by MT may have been grounds for clemency by the convening authority, they are not persuasive and should not be grounds for sentencing relief from this Court. Convening authorities may, in limited circumstances, reduce, commute, or suspend the sentence of an accused up to and including a punitive discharge under R.C.M. 1109(e)-(f). The convening authority in this case did take action on clemency, remitting the reduction in rank and suspending automatic forfeitures. (Entry of Judgment, ROT, Vol. 1.) However, the circumstances contemplated under R.C.M. 1109(e)-(f) for convening authority action on the punitive discharge did not apply in this case. In asking this Court to bestow mercy that was beyond the convening authority's reach, Appellant is asking this Court to engage in an unauthorized exercise of clemency. *See* Walters, 71 M.J. at 698. Even if this Court were authorized to grant such clemency, it would not be warranted here because the DD is not inappropriately severe.

Appellant received far less than the maximum allowable sentence under the plea agreement. Only by preserving the DD can this Court ensure that "justice is done and that the accused gets the punishment he deserves." Healy, 26 M.J. at 395. To grant Appellant relief would not only be an improper exercise of a clemency power that this Court does not have, but also a miscarriage of justice. The DD is appropriate, reasonable, and was adjudicated after consideration of all facts, circumstances, and matters presented in mitigation or extenuation at trial. No additional matters have been presented which warrant reduction. Thus, Appellant's sentence to a DD should be affirmed.

II.

RELIEF UNDER ARTICLE 66(d)(2), UCMJ, IS INAPPROPRIATE BECAUSE THERE WAS NOT UNREASONABLE DELAY OR INSTITUTIONAL NEGLECT IN POST-TRIAL PROCESSING.

Additional Facts

The sentence was announced on 2 April 2024. The ROT was prepared and docketed with this Court within the 150-day timeline, on 29 July 2024. Appellant requested 8 enlargements of time, all of which were opposed by government appellate counsel, but ultimately granted by this Court, totaling 319 days granted through enlargements of time. On 22 May 2025, Appellant filed a motion to compel working copies of Attachments 4 and 9 of Prosecution Exhibit 1, which were the pretext phone call and body camera footage from 20 December 2022, because the copies of the files were not functioning. By 29 May 2025, government appellate counsel provided working copies to appellate defense counsel and filed a motion to attach. This Court denied the motion to attach on 12 June 2025 and ordered the Government to show cause as to why this case should not be remanded for correction. Government appellate counsel responded on 25 June 2025, citing cases where a remand was not necessary where the working copies had been previously provided. On 30 June 2025, this Court ordered the case be remanded for correction in accordance with the provisions of R.C.M. 1112 and further ordered the case be re-docketed by 15 August 2025. The Government complied with this order, and the case was re-docketed on 15 August 2025. Appellant filed his brief 60 days later, on 15 October 2025.

Standard of Review

This Court reviews de novo whether excessive post-trial delay warrants relief under Article 66(d)(2), UCMJ.

Law and Analysis

This Court may provide appropriate relief if Appellant demonstrates error or excessive delay in post-trial processing. Article 66(d)(2), UCMJ. There is facially unreasonable delay if a case is docketed 150 days after sentencing. United States v. Livak, 80 M.J. 631, 634 (A.F. Ct. Crim. App. 2020).

Appellant claims that the error in the ROT necessitated a remand, and thus the time it took to correct the error through remand created an unreasonable post-trial delay. (App. Br. at 12-13.) This position fails because: 1) the ROT was appropriately docketed with this Court within the 150-day clock; 2) the Government provided Appellant and appellate defense counsel working copies of the corrupted exhibits 7 days after the discrepancy was discovered; 3) the error to the ROT was appropriately corrected through remand; 4) the Government complied with this Court's order and re-docketed the case at the deadline imposed; and 5) Appellant has failed to demonstrate any prejudice or harm. Thus relief under Article 66(d)(2) is not appropriate.

There is no unreasonable delay because the ROT was docketed within 150-days

Under the standards set forth in Moreno and Livak, a ROT is to be docketed within 150-days of sentencing. Here, Appellant was sentenced on 2 April 2024, and the ROT was docketed with this Court 118 days later, on 29 July 2024. Though there was a subsequent remand to correct errors with Attachments 4 and 9 of Prosecution Exhibit 1, such remand does not extend or reopen the period under consideration for unreasonable delay in post-trial processing. United States v. Donley, 2024 CCA LEXIS 228, *36 (A.F. Ct. Crim. App. 11 June 2024); United States v. Fernandez, 2024 CCA LEXIS 7 *36 (A.F. Ct. Crim. App. 9 January 2024); United States v. Gammage, 2023 CCA LEXIS 528, *6 (A.F. Ct. Crim. App. 15 Dec 2023); United States v. Muller, 2021 CCA LEXIS 412, *14-15 (A.F. Ct. Crim. App. 16 August 2021). Once a case has

been docketed, the clock stops. Appellant's clock stopped at the initial docketing, which was well within the 150-day threshold. Therefore, there was no unreasonable delay and relief under Article 66(d)(2) is not warranted.

Appellant and appellate defense counsel were expeditiously provided working copies

Once the case was docketed in July 2024, appellate defense counsel was granted, over government appellate counsel opposition, 8 enlargements of time, garnering a total of 319 days of delay. The eighth request for enlargement of time was filed on 16 May 2024. On 22 May 2025, 6 days later, appellate defense counsel filed a motion to compel the Government to produce complete working copies of Attachments 4 and 9 to Prosecution Exhibit 1 because of missing portions of Attachment 4 and inability to access Attachment 9. Government appellate counsel discovered the same error in their copy of the ROT for Attachment 9, but were able to access Attachment 4. By 29 May 2025, 7 days after the motion to compel was filed, government appellate counsel had provided working copies of the complete files for Attachments 4 and 9 to appellate defense counsel and to this Court through a motion to attach.

This 7-day gap between the motion to compel being filed and appellate defense counsel receiving working copies of Attachments 4 and 9 pales in comparison to the 319 days obtained by appellate defense counsel to file their Assignment of Errors. Additionally, the missing exhibits had little impact on Appellant's ability to file his assignments of error, given he had the benefit of these files before the remand order and throughout the entirety of the time it took to correct the ROT—a total of 78 days—and for a total of 138-days prior to filing his brief on 14 October 2025. Therefore, there was no unreasonable delay and relief under Article 66(d)(2) is not warranted.

The error was fully corrected through remand

Appellate courts understand that records inevitably will be imperfect. United States v. Dunleavy, 2023 CCA LEXIS 99, *5 (A.F. Ct. Crim. App. Feb. 27, 2023) (unpub. op); *See also* United States v. Lashley, 14 M.J. 7, 8 (C.M.A. 1982). This Court found an imperfection in Attachments 4 and 9 and ordered a remand in accordance with the provisions of R.C.M. 1112 on 30 June 2025. This Court ordered the remand be completed and this case re-docketed by 15 August 2025. The Government fully complied with this order, completing the remand according to the provisions of R.C.M. 1112, and re-docketing the case on 15 August 2025. No enlargements of time were sought by Government. The deadline imposed by this Court was reasonable, was accomplished with appropriate urgency, and corrected the previously corrupted or non-working files with working files.

Appellant cites to United States v. Titus as an example of findings and sentence being set aside because of deficiencies in the ROT when the ROT was originally submitted for docketing. 2025 CCA LEXIS 146 (A.F. Ct. Crim. App. Apr. 7, 2025) (App. Br. at 13). In Titus, the errors in the ROT could not be sufficiently corrected through remand, leaving an uncertain recitation of witness testimony and plea colloquy, rendering this Court unable to complete a sufficient review. Titus, 2025 CCA LEXIS 146, *9-*12. This is not the case here, where the remand fully corrected and replaced the previously corrupted files with working files of Attachments 4 and 9 of Prosecution Exhibit 1. Based on the completion of the record via remand, this Court can conduct a full and proper review of the entire record in accordance with its duties. Therefore, no relief should be granted.

There has been no institutional neglect

Appellant has not shown institutional neglect or gross indifference. Instead, Appellant relies on a string of cases from Fiscal Year 2025 in which a remand was appropriate to correct the record. (App. Br. at 13). Of the 10 cases Appellant cites, 8 are still under review by this Court.[1] Of the two which have been decided, Covitz had no change to the sentence (2025 LX 48126, *43 (A.F. Ct. Crim. App. Mar. 19, 2025) and Martinez only provided relief in reduction to E-2 rather than E-1. 2025 LX 464337, *43 (A.F. Ct. Crim. App. Oct. 31, 2025). None of the cases cited by Appellant stand for or establish a precedent for reduction of a dishonorable discharge to a bad-conduct discharge as appropriate relief for post-trial delay. In Valentin-Andino, this Court found gross indifference and institutional neglect, yet only modified the sentence by altering the reduction in grade to E-2 rather than E-1. 85 M.J. 361 (C.A.A.F. 2025). The extent of relief Appellant seeks – reduction of a dishonorable discharge to a bad-conduct discharge – is well beyond the relief granted in Valentin-Andino, especially where there is no institutional neglect or gross indifference. The record here shows that the Government took continual steps in the post-trial processing of the case, did not allow this case to languish, urgently remedied the error after it was identified and again on remand, and met the deadline as imposed without requiring or seeking any additional time.

[1] United States v. Mabida, No. ACM 40682 (A.F. Ct. Crim. App. Sep. 2, 2025) (order); United States v. Pettigrew, No. ACM 40790 (A.F. Ct. Crim. App. Sep. 2, 2025) (order); United States v. Bush, No. ACM 40783, 2025 CCA LEXIS 394 (A.F. Ct. Crim. App. Aug. 21, 2025) (order); United States v. Hooker, No. ACM 40646 (A.F. Ct. Crim. App. July 9, 2025) (order); United States v. Robinson, No. ACM 24044, 2025 CCA LEXIS 259 (A.F. Ct. Crim. App. June 6, 2025) (order); United States v. Anderson, No. ACM 40654, 2025 CCA LEXIS 204 (A.F. Ct. Crim. App. May 8, 2025) (order); United States v. Kindred, No. ACM 40607, 2025 CCA LEXIS 147 (A.F. Ct. Crim. App. Apr. 7, 2025) (order); United States v. Burkhardt-Bauder, No. ACM 24011, 2025 CCA LEXIS 81 (A.F. Ct. Crim. App. Feb. 19, 2025) (order).

This case is not one of institutional neglect, but rather an instance of different levels of corrupted files making their way into various copies of the ROT and being fully corrected upon remand. As there is no institutional neglect, no relief is appropriate.

Appellant has suffered no prejudice or harm

The time required for remand was relatively short – 46 days. This time period again pales in comparison with the total of 443 additional days granted to Appellant to file his brief, including the 319 days obtained through enlargements of time and the 60 days after completion of the remand. Appellant cites no further errors in the ROT or corrupted files which may trigger additional correction or warrant relief. While the Government's mistake delayed review by 46 days, this delay will not prevent this Court from completing a timely review of this case within the prescribed 18-months. Additionally, this Court found that the 46-day period was necessary to correct the errors identified and also to ensure no additional errors persisted.

Further, Appellant had access to working copies of Attachments 4 and 9 before the order for remand and throughout the time it took for the remand to be completed. Appellant did not require additional enlargements of time following the remand to prepare his assignments of error. Appellant was not put in a position of Appellant was not harmed or unable to timely raise his assignment of errors. This is doubly so considering the 18-month review timeline will not expire until January 2026. Finally, Appellant has asserted no particularized prejudice or harm. Appellant has not been subjected to oppressive incarceration, his participation in his own defense has not been impaired, and he has not demonstrated any particularized anxiety. *See* United States v. Moreno, 63 M.J. 129, 139 (C.A.A.F. 2006).

There was not excessive delay of post-trial processing, and the error found in the ROT was fully corrected upon remand. The case was docketed well within the 150-day clock, the

remand was accomplished in accordance with this Court's deadline, and the case will be appropriately reviewed inside the 18-month timeline. Appellant has failed to raise sufficient evidence of institutional neglect or prejudice. Even if relief were appropriate for the 46-days it took to accomplish the remand and re-docket this case, the relief requested by Appellant is far outside what this Court has previously granted. Therefore, this Court should deny this assignment of error and grant no relief.

CONCLUSION

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

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 13 November 2025.

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40649 (f rev)**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Gavin D. TURTU	)	**PANEL CHANGE**
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 18th day of November, 2025,

ORDERED:

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

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

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
RAMÍREZ, ROBERTO, Lieutenant Colonel, Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S REPLY BRIEF**
v.	)	
	)	Before a Special Panel
Senior Airman (E-4) **GAVIN D. TURTU** United States Air Force, *Appellant.*	)	No. ACM 40649 (f rev)
	)	19 November 2025

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

Pursuant to Rule 18(d)(2) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, Appellant replies to the United States' answer filed on 13 November 2025.

Assignment of Error I

The portion of the sentence providing for a dishonorable discharge instead of a bad-conduct discharge is inappropriately severe.

The Government's argument concerning whether a dishonorable discharge is inappropriately severe unintentionally supports Appellant. The parties entered into a plea agreement providing, in relevant part, "that the military judge must at least adjudge a Bad Conduct Discharge." App. Ex. VII, ¶ 4. The Government now argues that Appellant's "acceptance of a [dishonorable discharge (DD)] as a possible outcome reflects an acceptance and agreement by Appellant that a DD may be appropriate." Gov't Br. at 15–16.[1] By the Government's own

[1] The Government makes similar arguments elsewhere in its answer. Gov't Br. at 5 (Appellant "agreed a dishonorable discharge may be appropriate" (capitalization altered; bold deleted)); 7 ("Appellant agreed to a DD as a potential outcome in his plea agreement"); 9 ("The possibility of a DD was a bargained-for benefit under the plea agreement." (bold omitted)); 9–10 ("Appellant knowingly and voluntarily entered into a plea agreement which included a provision that the military judge 'must *at least* adjudge a bad-conduct discharge.'" (quoting App. Ex. VII)). The logic of those statements indicates that by entering into a plea agreement that permitted the military judge to impose a bad-conduct discharge, the United States agreed to the appropriateness of that form of punitive discharge.

reasoning, the United States' acceptance of a bad-conduct discharge as a possible outcome reflects its acceptance and agreement that a bad-conduct discharge may be appropriate. That acknowledgment indicates that a dishonorable discharge is not *necessary*. Under both statute and presidential decree, a court-martial sentence may not be "greater than necessary[] to promote justice and to maintain good order and discipline in the armed forces . . . ." Uniform Code of Military Justice (UCMJ) art. 56(c)(1), 10 U.S.C. § 856(c)(1); Rule for Courts-Martial (R.C.M.) 1002(f), *Manual for Courts-Martial, United States* (*MCM*) (2019 ed.). Under its own logic, when it entered into the plea agreement, the Government recognized that a dishonorable discharge is not necessary. Rather, a bad-conduct discharge combined with the adjudged twenty-four months of confinement is "sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces." UCMJ art. 56(c)(1), 10 U.S.C. § 856(c)(1); R.C.M. 1002(f).

Additionally, the Government relies on anachronistic case law. 1 January 2019 is a red-letter day in the history of the American military justice system. That is the effective date for most of the Military Justice Act of 2016's provisions.[2] One of the significant changes that occurred on that date was the prescription of a mandatory sentencing principle. Article 56(c)(1) added this compulsory provision to the Uniform Code of Military Justice (UCMJ): "In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient,

[2] The Military Justice Act of 2016 was enacted as Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, §§ 5001–542, 130 Stat. 2000, 2894–968 (2016). That act generally delegated to the President the authority to establish the effective date of the act's provisions, "which date shall be not later than the first day of the first calendar month that begins two years after" the act's 23 December 2016 enactment date. *Id.*, § 5542(a), 130 Stat. at 2967. President Trump prescribed an effective date of 1 January 2019. Exec. Order No. 13825 of March 1, 2018, § 3(a), 83 Fed. Reg. 9889, 9889 (Mar. 8, 2018). He further ordered that, except as provided otherwise, the amendments would not apply to any case in which charges were referred to trial before 1 January 2019. *Id.*, § 3(d), 83 Fed. Reg. at 9889.

but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces . . . ." National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 5301(a), 130 Stat. at 2919 (codified at Art. 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1)). The President foot-stomped that requirement by including it in Rule for Courts-Martial (R.C.M.) 1002(f). R.C.M. 1002(f), *Manual for Courts-Martial, United States* (2019 ed.). The Government attempts to rely on a 1994 opinion of this Court indicating that upon Article 66 review, it will affirm a sentence that may be different than the one it finds appropriate as long as that sentence "is not inappropriate." Gov't Br. at 6 (quoting *United States v. Joyner*, 39 M.J. 965, 966 (A.F.C.M.R. 1994)). That is no longer a valid approach to this Court's review of a sentence adjudged in the timeframe of Appellant's court-martial. The law now precludes a sentence that violates Article 56's and R.C.M. 1002(f)'s "not greater than necessary" edicts. This Court may not affirm a sentence that is not "correct in law." Article 66(d)(1)(A). Art. 66(d)(1)(A), UCMJ, 10 U.S.C. § 866(d)(1)(A) ("The 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."). Thus, rather than merely assessing whether the portion of Appellant's sentence providing for a dishonorable discharge "is not inappropriate," this Court must assess whether it is the form of punitive discharge that "is sufficient, *but not greater than necessary*, to promote justice and to maintain good order and discipline in the armed forces." UCMJ art. 56(c)(1), 10 U.S.C. § 856(c)(1); R.C.M. 1002(f) (emphasis added). It is not.

Under its own interpretation of the plea agreement, the Government "agreed a [bad-conduct] discharge may be appropriate." Gov't Brief at 5 (capitalization altered; bold deleted). Because, as the Government itself recognized, a dishonorable discharge is not "necessary," this

Court should affirm a sentence of a bad-conduct discharge and confinement for twenty-four months.

Assignment of Error II

The post-trial processing error and resulting unreasonable delay warrant sentencing relief pursuant to Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

Before addressing the Government's legal arguments concerning the delay that arose because of inoperative portions of a prosecution exhibit in the record of trial, Appellant calls the Court's attention to what appears to be an erroneous transposition in the Government's Answer. The Government writes:

> On 22 May 2025, . . . appellate defense counsel filed a motion to compel the Government to produce complete working copies of Attachments 4 and 9 to Prosecution Exhibit 1 because of missing portions of Attachment 4 and inability to access Attachment 9. Government appellate counsel discovered the same error in their copy of the ROT for Attachment 9, but were able to access Attachment 4.

Gov't Br. at 20. The final sentence in that passage transposes the references to Prosecution Exhibit 1's Attachment 9 (clips from a police officer's body-worn camera) and Attachment 4 (a 1-hour, 43-minute, 32-second recording of a pretextual telephone call). *See* United States' Answer to Show Cause at 1–2, *United States v. Turtu* (No. ACM 40649) (filed 22 June 2025) (noting that the Government's copy of "Attachment 9 functioned correctly" and that a "copy of Attachment 4 was retrieved from the base legal office").

The Government erroneously claims that there can be no unreasonable post-trial delay in a case as long as it files something purporting to be a record of trial within 150 days of sentencing. Gov't Br. at 19. Of course, that is not the law. A presumption of unreasonable delay arises in an automatic review case if the record of trial is not docketed within 150 days of sentencing. *United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020). That does not suggest—and it is not the case—that unreasonable post-trial delay cannot occur in other ways. The Government cites

four decisions of this Court for the proposition that a remand to correct error "does not extend or reopen the period under consideration for unreasonable delay in post-trial processing." Gov't Br. at 19 (citing *United Sates v. Donley*, No. ACM 40350 (f rev), 2024 CCA LEXIS 228, at *36 (A.F. Ct. Crim. App. June 11, 2024), *aff'd*, __ M.J. __, No. 24-0209/AF, 2025 CAAF LEXIS 610 (C.A.A.F. July 22, 2025); *United States v. Fernandez*, No. ACM 40290 (f rev), 2024 CCA LEXIS 7, at *36 (A.F. Ct. Crim. App. Jan. 9, 2024), *aff'd*, __ M.J. __, No. 24-0101/AF, 2025 CAAF LEXIS 599 (C.A.A.F. July 22, 2025); *United States v. Gammage*, No. ACM S32731 (f rev), 2023 CCA LEXIS 528, at *6 (A.F. Ct. Crim. App. Dec. 15, 2023); *United States v. Muller*, No. ACM 39323 (mem.), 2021 CCA LEXIS 412, at *14–15 (A.F. Ct. Crim. App. Aug. 16, 2021)). Each of those cases deals with calculation of the *presumption* of unreasonable delay under either *Livak* or *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006). *Donley*, 2024 CCA LEXIS 228, at *35–36; *Fernandez*, 2024 CCA LEXIS 7, at *35–36; *Gammage*, 2023 CCA LEXIS 528, at *5–6; *Muller*, 2021 CCA LEXIS 412, at *14. Those cases do not stand for the proposition that the Government seeks to draw from them: that meeting the 150-day clock means "there was no unreasonable delay." Gov't Br. at 20.

As this Court observed in *Donley* and *Fernandez*, "neither the CAAF nor this court has held that the specific time standards in *Moreno* are the exclusive means by which an appellant may demonstrate a facially unreasonable delay." *Donley*, 2024 CCA LEXIS 228, at *36–37; *Fernandez*, 2024 CCA LEXIS 7, at *36. "Put another way, *Moreno* and *Livak* are a shield for an appellant's due process rights, not a sword for the Government to wield against appellants." *Donley*, 2024 CCA LEXIS 228, at *37; *Fernandez*, 2024 CCA LEXIS 7, at *37. Yet the Government's Answer attempts to wield the *Livak* standard in precisely the manner that the very case law upon which it relies precludes.

As this Court recognized in *Donley* and *Fernandez*, unreasonable delay can occur independent of the 150-day docketing standard. This Court has already determined that the "original certified record of trial" in the case was "not complete." *United States v. Turtu*, No. ACM 40649, 2025 CCA LEXIS 300, at *4 (A.F. Ct. Crim. App. June 30, 2025) (order). A delay arising from the Government's failure to meet its obligation to docket a complete record of trial is intrinsically unreasonable. Such unreasonable delay occurred here.

The Government attempts to downplay its mistakes in this case as "an instance of different levels of corrupted files making their way into various copies of the ROT and being fully corrected upon remand." Gov't Br. at 23. Those corrupted files did not make their own way into the record of trial, like a tick questing into a passing dog's fur. Rather, a Government agent inserted corrupted files into the record of trial. That is neglect. It is also part of a much larger pattern of institutional neglect.

Contrary to the Government's assertion that Appellant "has not shown institutional neglect," Gov't Brief at 22, Appellant's opening brief demonstrated that this was one of eleven cases this Court was compelled to remand in Fiscal Year 2025 due to faulty records of trial, on top of another case in which a faulty record of trial led to relief without remand. Appellant's Br. at 13. That demonstrates an ongoing "systemic problem indicating institutional neglect" in the preparation of records of trial in the Department of the Air Force. *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, *17 (A.F. Ct. Crim. App. June 7, 2024), *aff'd*, 85 M.J. 361 (C.A.A.F. 2025).

Air Force Chief of Staff General Kenneth S. Wilsbach recently observed, "Our warrior culture is built on standards – technical excellence, accountability, and pride in our profession." General Kenneth S. Wilsbach, First Letter to the Force (3 Nov. 2025), *available at*

https://www.af.mil/Portals/1/documents/2025SAF/24th_CSAF_First_Letter_to_the_Force.pdf.

As the disturbing pattern of offering flawed records of trial for docketing demonstrates, the Department of the Air Force is falling far short of "technical excellence" in its post-trial processing of courts-martial. Congress authorized this Court to impose accountability for such failures. UCMJ art. 66(d)(2), 10 U.S.C. § 866(d)(2). This Court should impose accountability by affirming a bad-conduct discharge in lieu of a dishonorable discharge. That would incentivize Air Force personnel to enhance their technical excellence in post-trial processing and thereby earn a justifiable pride in the execution of their mission.

Respectfully submitted,

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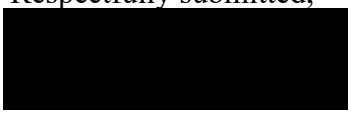
CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 19 November 2025.

Respectfully submitted,



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