

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIRST)
)	
v.	)	Before Panel No. 1
)	
Airman (E-2)	)	No. ACM 40478
BRIAN D. HOWARD,)	
United States Air Force	)	24 July 2023
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **6 October 2023**. The record of trial was docketed with this Court on 8 June 2023. From the date of docketing to the present date, 46 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 24 July 2023.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40478
BRIAN D. HOWARD, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 24 July 2023.

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

reduction to the grade of E-1, and a dishonorable discharge. R. at 912; EOJ. The convening authority took no action on the findings and the sentence. ROT Vol. 1, Convening Authority Decision on Action – *U.S. v. Airman Brian D. Howard*, signed 23 November 2022.

The record of trial is seven volumes consisting of 13 prosecution exhibits, five defense exhibits, and 37 appellate exhibits; the transcript is 913 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal and this request for an enlargement of time, and Appellant agrees with this request for an enlargement of time.

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

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 28 September 2023.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40478
BRIAN D. HOWARD, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

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

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

dishonorable discharge. R. at 912; EOJ. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action – *U.S. v. Airman Brian D. Howard*, signed 23 November 2022.

The record of trial is 7 volumes consisting of 13 prosecution exhibits, 5 defense exhibits, and 37 appellate exhibits; the transcript is 913 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal and this request for an enlargement of time, and Appellant agrees with this request for an enlargement of time.

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

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 23 October 2023.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40478
BRIAN D. HOWARD, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 25 October 2023.

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

dishonorable discharge. R. at 912; EOJ. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action – *U.S. v. Airman Brian D. Howard*, signed 23 November 2022. Appellant is currently confined.

The record of trial is 7 volumes consisting of 13 prosecution exhibits, 5 defense exhibits, and 37 appellate exhibits; the transcript is 913 pages. Undersigned counsel currently represents 22 clients and is presently assigned 15 cases pending brief before this Court. This case is counsel's seventh priority case, behind:

1. *In re Banker*, Misc. Dkt. No. 2022-01. The transcript of the *DuBay* hearing is 311 pages and the record is two volumes. Mr. Banker's writ-appeal petition is due to the Court of Appeals for the Armed Forces (C.A.A.F.) on 14 December 2023. Undersigned counsel was not the original counsel who filed a brief with the Air Force Court of Criminal Appeals, therefore undersigned counsel must review Mr. Banker's *DuBay* hearing transcript and record, as well as previous written filings, prior to filing Mr. Banker's writ-appeal petition with C.A.A.F.
2. *United States v. Doroteo*, No. ACM 40363. The trial transcript is 2,149 pages long and the record of trial is comprised of 14 volumes containing 19 prosecution exhibits, 3 defense exhibits, 151 appellate exhibits, and 2 court exhibits. Undersigned counsel has completed her review of the record of trial.
3. *United States v. Csiti*, No. ACM 40386. The trial transcript is 633 pages long, and the record of trial is comprised of 7 volumes containing 9 prosecution exhibits, 10 defense exhibits, 33 appellate exhibits, and 1 court exhibit. Undersigned counsel has completed her review of the record of trial.

4. *United States v. Byrne*, No. ACM 40391. The trial transcript is 945 pages long and the record of trial is comprised of 8 volumes consisting of 5 prosecution exhibits, 6 defense exhibits, 74 appellate exhibits, and 1 court exhibit. Counsel has not reviewed the record of trial.
5. *United States v. McCartney*, No. ACM. 40414. The record of trial is 4 volumes consisting of 21 prosecution exhibits, 7 defense exhibits, and 3 appellate exhibits; the transcript is 123 pages. Undersigned counsel has not yet completed a review of the record of trial.
6. *United States v. Soucek*, No ACM. 40465. The record of trial is 5 volumes consisting of 4 prosecution exhibits, 17 defense exhibits, 7 appellate exhibits, and 1 court exhibit; the transcript is 165 pages. Undersigned counsel has not yet completed a review of the record of trial.

Since Appellant's last request for an enlargement of time, undersigned counsel completed her review of the records of trial for *United States v. Doroteo* and *United States v. Csiti*. She attended the University of North Carolina (UNC) Appellate Advocacy Training in Chapel Hill, NC, from 25-27 October 2023. Upon returning from the UNC training, counsel immediately took leave from 28-30 November 2023 to attend an out-of-state funeral for a family member. Counsel then attended the Appellate Judges Education Institute 2023 Summit from 2-5 November 2023. From 6-15 November 2023, counsel prepared for, and participated in, an oral argument ordered by this Court for *United States v. Davis*, No. ACM 40370, in Chicago, IL. Finally, counsel prepared for, and participated in, two moot oral arguments for her colleagues for *United States v. Cole*, USCA Dkt. No. 23-0162/AF, and *In re H.V.Z.*, USCA Dkt. No. 23-0250/AF.

Through no fault of Appellant, undersigned counsel has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully

review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal and this request for an enlargement of time, and Appellant agrees with this request for an enlargement of time.

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

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 21 November 2023.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40478
BRIAN D. HOWARD, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 22 November 2023.

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

dishonorable discharge. R. at 912; EOJ. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action – *U.S. v. Airman Brian D. Howard*, signed 23 November 2022. Appellant is currently confined.

The record of trial is 7 volumes consisting of 13 prosecution exhibits, 5 defense exhibits, and 37 appellate exhibits; the transcript is 913 pages. Undersigned counsel currently represents 20 clients and is presently assigned 15 cases pending brief before this Court. This case is counsel's fifth priority case, behind:

1. *United States v. Csiti*, No. ACM 40386. The trial transcript is 633 pages long, and the record of trial is comprised of 7 volumes containing 9 prosecution exhibits, 10 defense exhibits, 33 appellate exhibits, and 1 court exhibit. Undersigned counsel has completed her review of the record of trial and is beginning to draft SSgt Csiti's AOE brief. SSgt Csiti's AOE brief is due to this Court on 24 January 2024.
2. *United States v. Byrne*, No. ACM 40391. The trial transcript is 945 pages long and the record of trial is comprised of 8 volumes consisting of 5 prosecution exhibits, 6 defense exhibits, 74 appellate exhibits, and 1 court exhibit. Undersigned counsel has not reviewed the record of trial. Mr. Phil Cave is the lead counsel for this case.
3. *United States v. McCartney*, No. ACM. 40414. The record of trial is 4 volumes consisting of 21 prosecution exhibits, 7 defense exhibits, and 3 appellate exhibits; the transcript is 123 pages. Undersigned counsel has not yet reviewed the record of trial.
4. *United States v. Soucek*, No ACM. 40465. The record of trial is 5 volumes consisting of 4 prosecution exhibits, 17 defense exhibits, 7 appellate exhibits, and 1 court exhibit; the transcript is 165 pages. Undersigned counsel has not yet reviewed the record of trial.

Since Appellant's last request for an enlargement of time, undersigned counsel filed a Writ-Appeal Petition for *In re Banker*, Misc. Dkt. No. 2022-01, with the Court of Appeals for the Armed Forces, and filed an AOE brief, consisting of 11 issues, for *United States v. Doroteo*, No. ACM 40363, with this Court. She also prepared for, and participated in, six moot oral arguments for her colleagues for *United States v. Cole*, USCA Dkt. No. 23-0162/AF, *In re H.V.Z.*, USCA Dkt. No. 23-0250/AF, *United States v. Palik*, USCA Dkt. No. 23-0206/AF, and *In re R.W.*, Misc. Dkt. 2023-08. Finally, counsel advised one member regarding his opportunity to appeal directly to this Court.

Through no fault of Appellant, undersigned counsel has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal and this request for an enlargement of time, and Appellant agrees with this request for an enlargement of time.

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

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

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

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>)	OPPOSITION TO APPELLANT'S
)	MOTION FOR ENLARGEMENT
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Airman (E-2))	ACM 40478
BRIAN D. HOWARD, USAF,)	
<i>Appellant.</i>)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 28 December 2023.

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

dishonorable discharge. R. at 912; EOJ. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action – *U.S. v. Airman Brian D. Howard*, signed 23 November 2022. Appellant is currently confined.

The record of trial is 7 volumes consisting of 13 prosecution exhibits, 5 defense exhibits, and 37 appellate exhibits; the transcript is 913 pages. Undersigned counsel currently represents 19 clients and is presently assigned 14 cases pending brief before this Court. This case is counsel's fourth priority case, behind:

1. *United States v. Byrne*, No. ACM 40391. The trial transcript is 945 pages long and the record of trial is comprised of 8 volumes consisting of 5 prosecution exhibits, 6 defense exhibits, 74 appellate exhibits, and 1 court exhibit. Undersigned counsel is currently reviewing the record of trial. Mr. Phil Cave is the lead counsel for this case.
2. *United States v. McCartney*, No. ACM. 40414. The record of trial is 4 volumes consisting of 21 prosecution exhibits, 7 defense exhibits, and 3 appellate exhibits; the transcript is 123 pages. TSgt McCartney filed a motion to withdraw from appellate review on 24 January 2024. This motion is pending action by this Court.
3. *United States v. Soucek*, No ACM. 40465. The record of trial is 5 volumes consisting of 4 prosecution exhibits, 17 defense exhibits, 7 appellate exhibits, and 1 court exhibit; the transcript is 165 pages. Undersigned counsel has not yet reviewed the record of trial.

Since Appellant's last request for an enlargement of time, undersigned counsel reviewed the record of trial for *United States v. McCartney*, No. ACM 40414. She also filed an AOE brief, consisting of three issues, for *United States v. Csiti*, No. ACM 40386, with this Court. Finally, she prepared for, and participated in, four moot oral arguments for her colleagues for *United States v. Smith*, USCA Dkt. No. 23-0207/AF, and *United States v. Leipart*, USCA Dkt. No. 23-0163/AF.

Through no fault of Appellant, undersigned counsel has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal and this request for an enlargement of time, and Appellant agrees with this request for an enlargement of time.

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

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 25 January 2024.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40478
BRIAN D. HOWARD, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 26 January 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee,</i> v. Airman (E-2) BRIAN D. HOWARD, United States Air Force <i>Appellant</i>) APPELLANT’S MOTION FOR) ENLARGEMENT OF TIME) (SEVENTH))) Before Panel No. 1)) No. ACM 40478)) 23 February 2024
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**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **3 April 2024**. The record of trial was docketed with this Court on 8 June 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 7 September 2023, and 24-28 October 2023, Appellant was tried by a general court-martial at Misawa Air Base, Japan. Contrary to his pleas, a panel of officer and enlisted members found Appellant guilty of one specification of assault of a superior commissioned officer, in violation of Article 89, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 889 (2019); one specification of willfully disobeying a superior commissioned officer, in violation of Article 90, UCMJ, 10 U.S.C. § 890 (2019); two specifications of insubordinate conduct toward a noncommissioned officer, in violation of Article 91, UCMJ, 10 U.S.C. § 890 (2019); and three specifications of willful dereliction of duty, in violation of Article 92, UCMJ, 10 U.S.C. § 892 (2019). R. at 8-9, 842; Entry of Judgment (EOJ), dated 7 December 2022. The panel members sentenced Appellant to 6 years’ confinement, reduction to the grade of E-1, and a

dishonorable discharge. R. at 912; EOJ. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action – *U.S. v. Airman Brian D. Howard*, signed 23 November 2022. Appellant is currently confined.

The record of trial is 7 volumes consisting of 13 prosecution exhibits, 5 defense exhibits, and 37 appellate exhibits; the transcript is 913 pages. Undersigned counsel currently represents 16 clients and is presently assigned 12 cases pending brief before this Court. This case is counsel's third priority case, behind:

1. *United States v. Byrne*, No. ACM 40391. The trial transcript is 945 pages long and the record of trial is comprised of 8 volumes consisting of 5 prosecution exhibits, 6 defense exhibits, 74 appellate exhibits, and 1 court exhibit. Undersigned counsel has reviewed the record of trial. Undersigned counsel is working with the lead counsel, Mr. Phil Cave, to finalize the A1C Byrne's AOE brief, due to this Court on 14 March 2024.
2. *United States v. Davis*, No. ACM 40370. The appellant's petition for grant of review is due to the Court of Appeals for the Armed Forces (CAAF) on 26 March 2024.

Since Appellant's last request for an enlargement of time, undersigned counsel completed her review of the record of trial for *United States v. Byrne*, No. ACM 40391, conducted legal research for potential issues, and assisted the lead counsel in drafting and editing A1C Byrne's AOE brief. She also filed a motion for withdrawal from appellate review in *United States v. McCartney*, No. ACM 40414 and completed a draft supplement to a petition for grant of review for *United States v. Davis*, No. ACM 40370. Finally, she prepared for, and participated in, three moot oral arguments for her colleagues for *United States v. Stradtmann*, USCA Dkt. No. 23-0223/AF, and *United States v. Wells*, USCA Dkt. No. 23-0219/AF.

Through no fault of Appellant, undersigned counsel has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal and this request for an enlargement of time, and Appellant agrees with this request for an enlargement of time.

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

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 23 February 2024.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40478
BRIAN D. HOWARD, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 23 February 2024.

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

dishonorable discharge. R. at 912; EOJ. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action – *U.S. v. Airman Brian D. Howard*, signed 23 November 2022.

Appellant's record of trial is 7 volumes consisting of 13 prosecution exhibits, 5 defense exhibits, and 37 appellate exhibits; the transcript is 913 pages. Undersigned counsel has completed her review of Appellant's record of trial. Appellant is currently confined.

Undersigned counsel currently represents 15 clients and is presently assigned 10 cases pending brief before this Court. This case is currently counsel's third priority case, although it will become counsel's first priority case on 1 April 2024. Ahead of this case, counsel has the following two cases:

1. *United States v. Doroteo*, No. ACM 40363. The trial transcript is 945 pages long and the record of trial is comprised of 8 volumes consisting of 5 prosecution exhibits, 6 defense exhibits, 74 appellate exhibits, and 1 court exhibit. SrA Doroteo's Reply Brief is due to this Court on 27 March 2024.
2. *United States v. Williams*, No. ACM 40485. The record of trial is 5 volumes consisting of 10 prosecution exhibits, 3 defense exhibits, and 5 appellate exhibits; the transcript is 116 pages. Airman Williams' Reply Brief is due to this Court on 29 March 2024.

Since Appellant's last request for an enlargement of time, undersigned counsel completed her review of Appellant's record of trial. She also filed a reply brief in *United States v. Csiti*, No. ACM 40386, filed a petition and supplement for grant of review for *United States v. Davis*, No. ACM 40370, and filed an AOE brief in *United States v. Williams*, No. ACM 40485. She prepared for, and participated in, two moot oral arguments for her colleague for *United States v. Wells*, USCA Dkt. No. 23-0219/AF. Finally, undersigned counsel was on leave from 13-22 March 2024.

Through no fault of Appellant, undersigned counsel has yet to complete the AOE brief for Appellant's case and will be unable to complete it by the current due date. This enlargement of time is necessary to allow undersigned counsel to finish legal research, advise Appellant regarding potential errors, and prepare Appellant's AOE brief. Appellant was informed of his right to a timely appeal and this request for an enlargement of time, and Appellant agrees with this request for an enlargement of time.

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

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
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Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 25 March 2024.

MEGAN R. CROUCH, Maj, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40478
BRIAN D. HOWARD, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

J. PETER FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 25 March 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES <i>Appellee,</i>	)	MOTION FOR LEAVE TO FILE AND MOTION FOR REMAND
)	
v.	)	Before Panel No. 1
)	
Airman (E-2)	)	No. ACM 40478
BRIAN D. HOWARD,)	
United States Air Force	)	29 March 2024
<i>Appellant</i>)	

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

Pursuant to Rule 6(c), 23(d), and 23.3 of this Honorable Court’s Rules of Practice and Procedure, Appellant, Airman (Amn) Brian D. Howard, hereby moves this Court for leave to file a motion for remand to correct omissions in the record. Pursuant to Rule 23(d), the motion for leave to file the pleading, along with the pleading itself, are combined herein.

Amn Howard’s general court-martial transcription is incomplete and not verbatim. *See* Motion *infra*. Additionally, Amn Howard’s record of trial is missing two documents: the attachment “Victim Input” to the Staff Judge Advocate’s Pretrial Advice, and either Preliminary Hearing Officer (PHO) Exhibit 23 or PHO Exhibit 24. *See* Motion *infra*. Addressing the incompleteness of the Record of Trial now as opposed to in Amn Howard’s assignments of error avoids piecemeal review of Amn Howard’s court-martial and allows this Court and undersigned counsel to meaningfully fulfill their individual roles under Articles 66 and 70, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 866, 870.

WHEREFORE, Appellant respectfully requests this Honorable Court grant his motion for leave to file and consider the motion for remand included below.

MOTION

Facts

On 7 September 2023 and 24-28 October 2023, Appellant was tried by a general court-martial at Misawa Air Base, Japan. Contrary to his pleas, a panel of officer and enlisted members found Appellant guilty of one specification of assault of a superior commissioned officer, in violation of Article 89, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 889; one specification of willfully disobeying a superior commissioned officer, in violation of Article 90, UCMJ, 10 U.S.C. § 890; two specifications of insubordinate conduct toward a noncommissioned officer, in violation of Article 91, UCMJ, 10 U.S.C. § 890 (2019); and three specifications of willful dereliction of duty, in violation of Article 92, UCMJ, 10 U.S.C. § 892 (2019). R. at 8-9, 842; Entry of Judgment (EOJ), dated 7 December 2022. The panel members sentenced Appellant to 6 years' confinement, reduction to the grade of E-1, and a dishonorable discharge. R. at 912; EOJ. The convening authority took no action on the findings and the sentence. Convening Authority Decision on Action – *U.S. v. Airman Brian D. Howard*, signed 23 November 2022.

During trial, Amn Howard's trial defense team requested the military judge provide two jury instructions—lack of mental responsibility and lost/destroyed evidence—and offered argument in support of this request. R. at 733-745. In the transcription of the court-martial proceedings, the military judge stated she would “read the cases [offered by the parties], . . . apply it to the facts that were raised in the court, and let the parties know if [she] decides to include it.” R. at 744. The Article 39(a), UCMJ, hearing concluded at 1741 on 27 October 2022. R. at 747. The next page in the transcription begins with the military judge reading the findings instructions to the panel members. R. at 748. However, per the audio recording of the court-martial proceedings, there is an entire Article 39(a), UCMJ, hearing where the military judge issues her

oral rulings denying the trial defense’s request for the two instructions, which were not captured in the verbatim transcript. Amn Howard Recordings of Proceedings, Audio File: Test_20221028-0734_01d8ea9fc8ac8a00 (00:00-07:44).

Law

Article 54(c)(2), UCMJ, requires that a “complete record of proceedings and testimony shall be prepared in any case” where the sentence includes a discharge. 10 U.S.C. § 854. Rule for Courts-Martial (R.C.M.) 1112(b) states the record of trial must contain “[a] substantially verbatim recording of the court-martial proceedings.” *See* R.C.M. 1114(a) (“A certified verbatim transcript of the record of trial shall be prepared [w]hen the judgment entered into the record includes . . . a dishonorable or bad-conduct discharge, or confinement for more than six months.”). This certified transcript must be prepared without cost to the accused. R.C.M. 1114(d). If the record of trial forwarded to appellate defense counsel does not include a written transcript of the proceedings, “the Government shall provide appellate defense counsel with appropriate equipment for playback of the recording and with either (i) the means to transform the recording into a text format through voice recognition software or similar means; or (ii) a transcription of the record in either printed or digital format.” R.C.M. 1116(b)(1)(A).

A substantial omission renders a record of trial incomplete. *United States v. Henry*, 53 M.J. 108, 111 (C.A.A.F. 2000) (citations omitted). An incomplete record may be returned to the military judge for correction. R.C.M. 1112(d)(2) (“A superior competent authority may return a [ROT] to the military judge for correction under this rule. The military judge shall give notice of the proposed correction to all parties and permit them to examine and respond to the proposed correction.”).

This Court may grant relief “on the basis of the entire record” of trial. Article 66, UCMJ, 10 U.S.C. § 866. Appellate defense counsel so detailed by the Judge Advocate General shall represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870. This Court’s “broad mandate to review the record unconstrained by appellant’s assignments of error” does not reduce “the importance of adequate representation” by counsel; “independent review is not the same as competent appellate representation.” *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, *inter alia*, a duty to provide “competent representation,”¹ perform “reasonable diligence,”² and to “give a client his or her best professional evaluation of the questions that might be presented on appeal . . . [to] consider all issues that might affect the validity of the judgment of conviction and sentence . . . [to] advise on the probable outcome of a challenge to the conviction or sentence. . . . [and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance.”³

Analysis

The law requires a certified verbatim transcript of the recording of the court-martial proceedings be included in a record of trial where the sentence includes a discharge. 10 U.S.C. § 854; R.C.M. 1112(b); R.C.M. 1114(a). If a record of trial does not include a written transcript of the proceedings, the Government must provide defense counsel with the means to transform the recording into a text format through voice recognition software (without any cost to the

¹ Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1 (11 Dec. 2018).

² *Id.* at Rule 1.3.

³ AFI 51-110, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b).

appellant or his defense counsel), or a transcription of the record in either printed or digital format. R.C.M. 1116(b)(1)(A); R.C.M. 1114(d).

Amn Howard's general court-martial transcription is incomplete and not verbatim. It is missing an entire Article 39(a), UCMJ, hearing, where the military judge issues two rulings denying trial defense counsel's request for two findings instructions. It is also missing a ruling by the military judge as to an objection by trial defense counsel. R. at 488-89. Furthermore, there are parts of the transcript that are incorrect when compared with the audio recordings. R. at 539, lines 8-10; R. at 843, lines 1-9. Although counsel has identified multiple errors in the transcript, counsel cannot be certain that all errors or missing portions of the record have been identified. Amn Howard respectfully requests this Court issue an order to correct the court-martial proceeding transcription by completing a new, verbatim transcript, from start to finish.

Amn Howard's record of trial is also missing two documents. The attachment "Victim Input" to the Staff Judge Advocate's Pretrial Advice is missing from the record. Additionally, the record states that Preliminary Hearing Officer (PHO) Exhibits 23 and 24 are each two pages and have "previously been included in the Record of Trial [and] can be found under the Prosecution Exhibits section as Prosecution Exhibit 4." Record of Trial (ROT) Volume 4. However, Prosecution Exhibit 4 is only two pages. Therefore, it is unclear if PHO Exhibit 23 or PHO Exhibit 24 is Prosecution Exhibit 4, and which of the two PHO Exhibits is missing. However, given the total number of pages of PHO Exhibits 23 and 24, and the total number of pages of Prosecution Exhibit 4, it is clear one of the two exhibits is missing from the record. Amn Howard respectfully requests this Court issue an order to correct the record and include the missing documents.

It is necessary for Amn Howard’s counsel to review a complete record to competently conduct a professional evaluation of Amn Howard’s case and to uncover all issues which might afford him relief. The failure to include “[a] substantially verbatim recording of the court-martial proceedings” and the two missing pretrial exhibits is a prejudicial omission from the record and this Court should remand this case for the record to be completed in accordance with R.C.M. 1112(d)(2).

WHEREFORE, Appellant respectfully requests this Honorable Court grant this motion and return this case to the Chief Trial Judge, Air Force Trial Judiciary, for correction under R.C.M. 1112(d).

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 29 March 2024.

MEGAN R. CROUCH, Maj, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES’ RESPONSE
<i>Appellee,</i>	)	TO MOTION FOR LEAVE TO
	)	FILE FOR REMAND
v.)	
	)	Before Panel No. 1
Airman (E-2))	
BRIAN D. HOWARD	)	No. ACM 40478
United States Air Force)	
<i>Appellant.</i>	)	3 April 2024

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

Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States responds to Appellant’s motion for leave to file a motion for remand. The United States does not oppose the motion for leave and agrees that remand is appropriate.

The United States agrees that portions of the verbatim transcript are missing when compared to the audio recording, including, but not limited to, the military judge’s ruling denying trial defense counsel’s request for additional findings instructions. The record of trial is also missing documents. The record of trial states that PHO Exhibit 23 and PHO Exhibit 24, both two pages each, have “previously been included in the Record of Trial [and] can be found under the Prosecution Exhibits section as Prosecution Exhibit 4.” But Prosecution Exhibit 4 is only a two-page document. Thus, it is unclear which PHO Exhibit is missing from the record. Victim input, an attachment to the Staff Judge Advocate’s Pretrial Advice, is also missing from the record.

The absence of a complete verbatim transcript, along with the missing documents, renders Appellant’s record of trial substantially incomplete in violation of Article 54(c)(2),

UCMJ. For these reasons, this Court should return the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction under R.C.M. 1112(d) to account for the missing portions of the verbatim transcript and missing documents.

WHEREFORE, the United States agrees that remand is appropriate and respectfully requests this Honorable Court return the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction under R.C.M. 1112(d).

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MATTHEW D. TALCOTT, Colonel, USAF
Chief
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FOR

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 3 April 2024.

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United States Air Force