

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (FIRST)
)	
v.	)	Before Panel 1
)	
Airman First Class (E-3)	)	No. ACM 40550
BRIAN T. SMITH,)	
United States Air Force	)	8 February 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **17 April 2024**. The record of trial was docketed with this Court on 19 December 2023. From the date of docketing to the present date, 51 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 8 February 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 First Class (E-3)	)	ACM 40550
BRIAN T. SMITH, 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 8 February 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME (SECOND)
)	
v.	)	Before Panel 1
)	
Airman First Class (E-3)	)	No. ACM 40550
BRIAN T. SMITH,)	
United States Air Force	)	5 April 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 May 2024**. The record of trial was docketed with this Court on 19 December 2023. From the date of docketing to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.

On 26 June 2023, at Spangdahlem Air Base, Germany, R. at 1, Appellant was tried by a general court-martial sitting as a military judge alone. R. at 11. Consistent with his pleas, R. at 13, Appellant was found guilty of one charge and two specifications in violation of Article 134, Uniform Code of Military Justice, for possession and distribution of child pornography. R. at 99. One specification of possession and one specification of distribution of child pornography were withdrawn and dismissed with prejudice, pursuant to Appellant’s plea agreement. R. at 94, 100. The military judge sentenced Appellant to a dishonorable discharge, confinement for 40 months, a reduction in pay grade to Airman Basic (E-1), and a reprimand. R. at 142. The convening authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. AIC Brian T. Smith*.

The ROT is three volumes consisting of three prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 144 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement.

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

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 April 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 First Class (E-3)	)	ACM 40550
BRIAN T. SMITH, 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 5 April 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	)	APPELLANT’S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (THIRD)
)	
v.	)	Before Panel 1
)	
Airman First Class (E-3)	)	No. ACM 40550
BRIAN T. SMITH,)	
United States Air Force	)	7 May 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 June 2024**. The record of trial was docketed with this Court on 19 December 2023. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 26 June 2023, at Spangdahlem Air Base, Germany, R. at 1, Appellant was tried by a general court-martial sitting as a military judge alone. R. at 11. Consistent with his pleas, R. at 13, Appellant was found guilty of one charge and two specifications in violation of Article 134, Uniform Code of Military Justice, for possession and distribution of child pornography. R. at 99. One specification of possession and one specification of distribution of child pornography were withdrawn and dismissed with prejudice, pursuant to Appellant’s plea agreement. R. at 94, 100. The military judge sentenced Appellant to a dishonorable discharge, confinement for 40 months, a reduction in pay grade to Airman Basic (E-1), and a reprimand. R. at 142. The convening authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, Convening

Authority Decision on Action – *United States v. AIC Brian T. Smith*. Appellant is currently confined.

The ROT is three volumes consisting of three prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 144 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant’s case. An enlargement of time is necessary to allow counsel time to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement.

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

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 May 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 First Class (E-3)	)	ACM 40550
BRIAN T. SMITH, 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 8 May 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

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

UNITED STATES	)	No. ACM 40550
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Brian T. SMITH)	
Airman First Class (E-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 7 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Third) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

In this motion, Appellant’s counsel accurately states that the court docketed the record of trial on 19 December 2023. We also note that given the sentencing date of 26 June 2023, 176 days passed from sentencing to the date of docketing.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 9th day of May, 2024,


ORDERED:

Appellant’s Motion for Enlargement of Time (Third) is **GRANTED**. Appellant shall file any assignments of error not later than **16 June 2024**.

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



FOR THE COURT

Commissioner 

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (FOURTH)
)	
v.	)	Before Panel 1
)	
Airman First Class (E-3)	)	No. ACM 40550
BRIAN T. SMITH,)	
United States Air Force	)	6 June 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 July 2024**. The record of trial was docketed with this Court on 19 December 2023. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 26 June 2023, at Spangdahlem Air Base, Germany, R. at 1, Appellant was tried by a general court-martial sitting as a military judge alone. R. at 11. Consistent with his pleas, R. at 13, Appellant was found guilty of one charge and two specifications in violation of Article 134, Uniform Code of Military Justice, for possession and distribution of child pornography. R. at 99. One specification of possession and one specification of distribution of child pornography were withdrawn and dismissed with prejudice, pursuant to Appellant’s plea agreement. R. at 94, 100. The military judge sentenced Appellant to a dishonorable discharge, confinement for 40 months, a reduction in pay grade to Airman Basic (E-1), and a reprimand. R. at 142. The convening authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, Convening

Authority Decision on Action – *United States v. AIC Brian T. Smith*. Appellant is currently confined.

The ROT is three volumes consisting of three prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 144 pages. Counsel is currently assigned 25 cases; 19 cases are pending initial AOE's before this Court. The following cases have priority over the instant case:

- 1) *United States v. Dillon*, ACM 40463 – The record of trial is four volumes, consisting of nine prosecution exhibits, eight defense exhibits, one court exhibit, and seven appellate exhibits; the transcript is 380 pages. Undersigned counsel filed an assignment of error on 13 May 2024. The Government's answer is due on 12 June 2024, with any reply being due on 19 June 2024. This appellant is confined.
- 2) *United States v. Murray*, Misc. Dkt. No. 2024-04 – This is an Article 62 appeal. Undersigned counsel filed an answer on 28 May 2024. Yesterday, 5 June 2024, the Government filed their reply brief along with a motion for oral argument. Appellee will not be opposing the Government's motion. Should this Court grant the Government's motion, preparation for that oral argument will take priority over the instant case.
- 3) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages. Undersigned counsel has begun reviewing the unsealed record and identified several potential issues. This appellant is confined.
- 4) *United States v. Couty*, ACM 40484 – The record of trial is seven volumes, consisting of 20 prosecution exhibits, two defense exhibits, two court exhibits, and 29 appellate

exhibits; the transcript is 868 pages. Undersigned counsel has begun reviewing the unsealed record. This appellant is confined.

- 5) *United States v. Kelhofer*, ACM 23012 – The record of trial is two volumes, consisting of 18 prosecution exhibits, three defense exhibits, and 11 appellate exhibits; the transcript is 494 pages. This appellant is not currently confined.
- 6) *United States v. Rice*, ACM 40502 – The record of trial is ten volumes, consisting of 41 appellate exhibits, 14 prosecution exhibits, four defense exhibits, and two court exhibits; the transcript is 514 pages. This appellant is confined.
- 7) *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. This appellant is not currently confined.
- 8) *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit; the transcript is 1,084 pages. This appellant is currently confined.
- 9) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. This appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement.

Additionally, Appellant was apprised of the status of undersigned counsel's progress on Appellant's case.¹

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

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

¹ This disclosure is made pursuant to this Court's Order on 9 May 2024, which required inclusion of a "statement as to . . . whether Appellant was provided an update of the status of counsel's progress on Appellant's case." Appellant provided *limited* consent for the disclosure of this attorney-client privileged communication. Further, pursuant to his continuing ethical obligations as an attorney, undersigned counsel maintains compliance with his jurisdiction's Rules of Professional Responsibility as they pertain to client communications with 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 Appellate Government Division on 6 June 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

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 First Class (E-3)	)	ACM 40550
BRIAN T. SMITH, 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 7 June 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee</i>	)	APPELLATE REVIEW AND
	)	MOTION TO ATTACH
)	
v.	)	Before Panel No. 1
)	
Airman First Class (E-3)	)	No. ACM 40550
BRIAN T. SMITH,)	
United States Air Force	)	3 July 2024
<i>Appellant</i>)	

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

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

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

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

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 3 July 2024.

Respectfully submitted,

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force