

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIRST)
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	20 October 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 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 **28 December 2023**. The record of trial was docketed with this Court on 30 August 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 enlargement of time.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 20 October 2023.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Captain (O-3)	)	ACM 40510
KRISTOPHER M. DOLEHANTY, USAF)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 24 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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	15 December 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)(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 **27 January 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 107 days have elapsed. On the date requested, 150 days will have elapsed.

On 10 May 2023, pursuant to his pleas and a plea agreement, a Military Judge sitting in a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of fleeing arrest, in violation of Article 87, UCMJ, 10 U.S.C. § 887 and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890. R. at 104. The Military Judge sentenced Appellant to be dismissed from the Air Force, to be confined for 59 days, and to be reprimanded. R. at 247. The Convening Authority took no actions on the findings or sentence and denied the Appellant’s request for waiver of all automatic forfeitures. *Convening Authority Decision on Action.*

The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits. The Appellant is not confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started a review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 15 December 2023.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Captain (O-3)	)	ACM 40510
KRISTOPHER M. DOLEHANTY, USAF)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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.

JOCELYN Q. WRIGHT, Capt, USAF
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 19 December 2023.

JOCELYN Q. WRIGHT, Capt, USAF
Appellate Government Counsel
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,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (THIRD)
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	19 January 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 **26 February 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 10 May 2023, pursuant to his pleas and a plea agreement, a Military Judge sitting in a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of fleeing arrest, in violation of Article 87, UCMJ, 10 U.S.C. § 887 and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890. R. at 104. The Military Judge sentenced Appellant to be dismissed from the Air Force, to be confined for 59 days, and to be reprimanded. R. at 247. The Convening Authority took no actions on the findings or sentence and denied the Appellant’s request for waiver of all automatic forfeitures. *Convening Authority Decision on Action.*

The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits. The Appellant is not confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started a review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 19 January 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Captain (O-3)	)	ACM 40510
KRISTOPHER M. DOLEHANTY, USAF)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 19 January 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 FOR ENLARGEMENT OF TIME (FOURTH)
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	15 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)(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 **27 March 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed.

On 10 May 2023, pursuant to his pleas and a plea agreement, a Military Judge sitting in a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of fleeing arrest, in violation of Article 87, UCMJ, 10 U.S.C. § 887 and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890. R. at 104. The Military Judge sentenced Appellant to be dismissed from the Air Force, to be confined for 59 days, and to be reprimanded. R. at 247. The Convening Authority took no actions on the findings or sentence and denied the Appellant’s request for waiver of all automatic forfeitures. *Convening Authority Decision on Action.*

The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits. The Appellant is not confined.

Appellate counsel is currently assigned 23 cases; 12 cases are pending initial AOE's before this Court. Counsel has one pending Supreme Court Reply Brief (Answer due to Court and Counsel on 20 February 2024) and four pending CAAF Petitions and Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Eleven Air Force Court cases have priority over the present case:

1. *United States v. Ellis*, No. ACM 40430¹ – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.² R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 640 days, to be discharged from the service with a bad conduct service characterization. *Id.*; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant's requests for deferments. ROT, Vol. 1, Convening Authority Decision on Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is not confined. Except for sealed materials, Counsel has reviewed the entire record. Counsel filed a motion to view sealed

¹ On 29 January 2024, this Court (Panel 1) approved Appellant's request for EOT 9. Without prior notice and without any status conferences, this Court said, "Given the nature of the case and the number of enlargements granted thus far, the court is not willing to grant any further enlargements of time absent exceptional circumstances." As such, Counsel has changed the prioritization of this guilty plea case over the two cases docketed before this case.

² Various charges and specifications were withdrawn and dismissed with prejudice.

materials contemporaneously with this request for an EOT. Barring unforeseen circumstances, Counsel intends to file this AOE on 1 March 2024.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he

denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT),

Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

7. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense

exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

8. *United States v. Scott*, No. ACM 40369 – On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022. The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

9. *United States v. Caswell*, No. ACM 23035 - On 31 January 2023, contrary to his pleas, a Military Judge sitting at a special court-martial at Seymour Johnson Air Force Base, NC, convicted Appellant of one charge, one specification of unlawfully carrying a firearm in violation of Article 114, UCMJ, 10 U.S.C. § 914; and one charge, one specification of communicating a threat in violation of Article 115, UCMJ, 10 U.S.C. § 915. R. at 172. The Military Judge sentenced Appellant to be reprimanded, to be confined for 31 days, and to be reduced to the rank of E-1. R. at 218. The Convening Authority took no action on the findings, no action on the sentence, and

denied Appellant's deferment request. ROT, Vol. 1, Convening Authority Decision on Action, 13 February 2023. The ROT consists of three volumes, three prosecution exhibits, 11 defense exhibits, 21 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of the case.

10. *United States v. Mejia*, No. ACM 40497 - On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The Convening Authority took no action on the findings, but took the following action on the sentence: deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*. The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is confined. Counsel has not yet started his review of this case.

11. *United States v. Ericson*, No. ACM 23045 - On 31 March 2023, contrary to his plea, military members in a special court-martial at Altus Air Force Base, Oklahoma, convicted Appellant of one charge, one specification of unauthorized access of a government computer, in violation of Article 123, UCMJ, 10. U.S.C. § 923. R. at 271. The members sentenced Appellant to hard labor without confinement for one month. R. at 301. The Convening Authority took no action on the findings or sentence. *Convening Authority Decision on Action*. The Record of Trial Consists

of four volumes, four prosecution exhibits, nine defense exhibits, and 31 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 15 February 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	NOTICE OF APPEARANCE
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 3
)	
Captain (O-3))	
KRISTOPHER M. DOLEHANTY,	)	No. ACM 40510
United States Air Force,)	
<i>Appellant.</i>	)	11 March 2024

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

COMES NOW the undersigned counsel, pursuant to Rule 13 of this Honorable Court's Rules of Practice and Procedure, and enters an appearance as counsel for Appellant.

Respectfully submitted,

REBECCA J. SAATHOFF, 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 were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 11 March 2024.

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

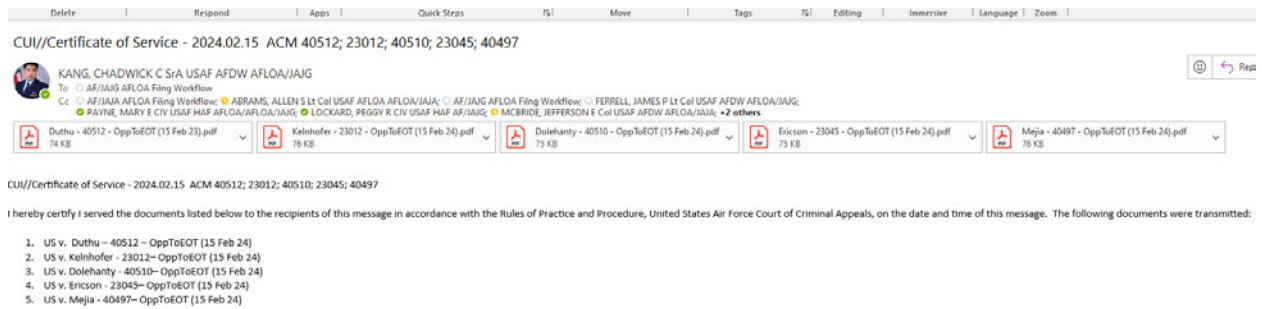
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR LEAVE TO FILE
<i>Appellee,</i>	)	UNITED STATES' OUT OF TIME
	)	GENERAL OPPOSITION TO
v.	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
)	
Captain (O-3)	)	ACM 40510
KRISTOPHER M. DOLEHANTY, USAF)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

Pursuant to Rules 23(d), 23.2 and 23.3(m)(7), of this Court's Rules of Practice and Procedure, the United States hereby enters its Motion for Leave to File and the United States' Out of Time General Opposition to Appellant's 15 February 2024 Motion for Enlargement of Time to file an Assignment of Error in this case.

This response is being filed out of time because the United States accidentally served the wrong workflow box when filing the EOT opposition on 15 February 2024.



The error did not come to the United States attention until the motions were granted without opposition. The United States understands that this Court has already granted an enlargement of time in this case, but would still like to put its general opposition to that enlargement of time on the

record. The United States filed an out of time opposition to this motion on 26 February 2024, however, that opposition was returned without action because it was not styled as a “motion for leave to file.” The United States has now styled the opposition as a “motion for leave to file.”

WHEREFORE, the United States respectfully requests this Court grant its motion for leave to file an out of time opposition.

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

ERTIFICATE 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 March 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 FOR ENLARGEMENT OF TIME (FIFTH)
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	15 March 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 fifth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 April 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 198 days have elapsed. On the date requested, 240 days will have elapsed.

On 10 May 2023, pursuant to his pleas and a plea agreement, a Military Judge sitting in a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of fleeing arrest, in violation of Article 87, UCMJ, 10 U.S.C. § 887 and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890. R. at 104. The Military Judge sentenced Appellant to be dismissed from the Air Force, to be confined for 59 days, and to be reprimanded. R. at 247. The Convening Authority took no actions on the findings or sentence and denied the Appellant’s request for waiver of all automatic forfeitures. *Convening Authority Decision on Action*.

The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits. The Appellant is not confined.

On 11 March 2024, Major Rebecca Saathoff filed a notice of appearance in this case. She is currently assigned three cases, all of which are pending initial AOE's before this Court. Maj Saathoff is a Reservist and has a full-time civilian job in the private sector serving clients. She has just been assigned to this case. Through no fault of Appellant, she has been working on other assigned matters and has not yet started her review of Appellant's case. Maj Saathoff has Inactive Duty Training (IDT) days scheduled in March, April, and May to work on cases. Two Air Force Court cases have priority over the present case for Maj Saathoff:

1. *United States v. Isaiah Edwards*, No. ACM 40522 – On 17 May 2023, in accordance with his pleas, a Military Judge in a general court-martial, at Fort Leavenworth, Kansas, convicted Appellant of one charge and three specifications of Assault upon a Person in the Execution of Law Enforcement Duties, in violation of Article 128, UCMJ. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 20 July 2023. The Military Judge sentenced Appellant to be reprimanded, 13 months confinement, and to be discharged from the service with a dishonorable service characterization. R. at 188-189. The Convening Authority took no actions on the findings or sentence adjudged. ROT, Vol. 1, Convening Authority Decision on Action. The ROT is three volumes, consisting of nine appellate exhibits, 11 prosecution exhibits, and one defense exhibit. Appellant is confined. Counsel has reviewed the entire record. Counsel filed a motion to withdraw from appellate review, and attach, on 11 Mar 2024.

2. *United States v. Cunningham*, No. ACM 23010 – On 20 Dec 2022, consistent with his pleas, a military judge sitting as a Special Court-Martial convicted Appellant of one charge and one specification of drunken operation of a vehicle, in violation of Article 113 Uniform Code of Military Justice (UCMJ). The Military Judge sentenced Appellant to be reduced to the grade of E-3 and to be confined for 11 days. ROT, Vol. 1, Entry of Judgment 5 January 2023. On 12 June

2023, SrA Cunningham filed his Notice of Direct Appeal with this Court. Two days later this case was docketed, and a consent motion for production of the verbatim transcript was granted on 27 Jun 2023. On 4 Aug 2023, this Honorable Court granted a Motion to Attach the verbatim transcript. The ROT consists of 2 volumes, 14 prosecution exhibits, 4 defense exhibits, 11 appellate exhibits, and zero court exhibits. The trial transcript is 149 pages long. Appellant is not confined. A Motion for Enlargement of Time (Fifth) was filed and subsequently granted by this Court on 14 Feb 2024. Counsel has just received this assignment and has not yet started her review of this case.

Undersigned Counsel filed a Motion to Withdraw as Appellate Defense Counsel with this Court on 13 March 2024. This Court has not yet acted upon that motion. Undersigned Counsel is currently assigned 22 cases; 11 cases are pending initial AOE's before this Court. Undersigned Counsel has two pending CAAF Supplements. Through no fault of Appellant, Undersigned Counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Ten Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months

and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed all unsealed exhibits and has started to review the transcript.

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the

service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening

Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

6. *United States v. Lawson*, No. ACM 23034 – On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 174, 204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023. The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

7. *United States v. Scott*, No. ACM 40369 – On 8 June 2022, pursuant to a plea agreement, enlisted members in a general court-martial at Davis-Monthan, Air Force Base, Arizona, convicted Appellant of one charge, one specification of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; one charge, two specifications of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928; and one additional charge, one specification of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 32. Members sentenced Appellant to be reduced to the grade of E-5, to forfeit all pay and allowances, and to be confined for 180 days. R. at 90. The Convening Authority took no action on the findings of the case, but took the following actions on

the sentence: 1) reduced the forfeiture of all pay and allowances to forfeiture of \$3,704.00 pay for six months; 2) deferred the reduction in rank until the Military Judge signed the Entry of Judgment; and 3) denied appellant's request for deferment of all adjudged forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 28 June 2022. The ROT consists of four volumes, three prosecution exhibits, 25 defense exhibits, 11 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of this case.

8. *United States v. Caswell*, No. ACM 23035 - On 31 January 2023, contrary to his pleas, a Military Judge sitting at a special court-martial at Seymour Johnson Air Force Base, NC, convicted Appellant of one charge, one specification of unlawfully carrying a firearm in violation of Article 114, UCMJ, 10 U.S.C. § 914; and one charge, one specification of communicating a threat in violation of Article 115, UCMJ, 10 U.S.C. § 915. R. at 172. The Military Judge sentenced Appellant to be reprimanded, to be confined for 31 days, and to be reduced to the rank of E-1. R. at 218. The Convening Authority took no action on the findings, no action on the sentence, and denied Appellant's deferment request. ROT, Vol. 1, Convening Authority Decision on Action, 13 February 2023. The ROT consists of three volumes, three prosecution exhibits, 11 defense exhibits, 21 appellate exhibits, and one court exhibit. Appellant is not confined. Counsel has not yet started his review of the case.

9. *United States v. Mejia*, No. ACM 40497 - On 8 March 2023, pursuant to his pleas and plea agreement, a military judge in a general court-martial at Osan Air Base, Republic of Korea, convicted Appellant of one charge with three specifications of possessing, viewing, and distributing child pornography in violation of Article 134, UCMJ, 10 U.S.C. § 934; and, of the same charge, two specifications of communicating indecent language in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 106. The Military Judge sentenced Appellant to be reprimanded, to

be reduced to the grade of E-1, to be confined for 12 months, and to be discharged dishonorably. R. at 208. The Convening Authority took no action on the findings, but took the following action on the sentence: deferral of the reduction in grade until the signing of the entry of judgment and waiver of automatic forfeitures for six months. *Convening Authority Decision on Action*. The Record of Trial consists of three volumes, 13 prosecution exhibits, 13 defense exhibits, and five appellate exhibits. Appellant is confined. Counsel has not yet started his review of this case.

10. *United States v. Ericson*, No. ACM 23045 - On 31 March 2023, contrary to his plea, military members in a special court-martial at Altus Air Force Base, Oklahoma, convicted Appellant of one charge, one specification of unauthorized access of a government computer, in violation of Article 123, UCMJ, 10. U.S.C. § 923. R. at 271. The members sentenced Appellant to hard labor without confinement for one month. R. at 301. The Convening Authority took no action on the findings or sentence. *Convening Authority Decision on Action*. The Record of Trial Consists of four volumes, four prosecution exhibits, nine defense exhibits, and 31 appellate exhibits. Appellant is not confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Division on 15 March 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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
)	
Captain (O-3)	)	ACM 40510
KRISTOPHER M. DOLEHANTY, USAF)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 19 March 2024.

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

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

UNITED STATES	)	No. ACM 40510
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Kristopher M. DOLEHANTY)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 15 March 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 20th day of March, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **26 April 2024**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, continue to include a statement as to: (1) whether Appellant was advised of Appellant’s right to a timely appeal, (2) whether Appellant was advised of the request for an enlargement of time, and (3) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT

FLEMING E. KEEFE, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR WITHDRAWAL OF
<i>Appellee,</i>	)	APPELLATE DEFENSE COUNSEL
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	13 March 2024
<i>Appellant.</i>)	

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) and of this Honorable Court's Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel for Captain Kristopher M. Dolehanty, Appellant, in the above-captioned case. Capt Dolehanty has been advised of this motion to withdraw and consents to this withdrawal of undersigned counsel. The reason for withdrawal is undersigned counsel's workload and pending permanent change of assignment; newly assigned counsel will be able to review Capt Dolehanty's record sooner than undersigned counsel.

Major Rebecca Saathoff has been detailed as successor counsel to represent Capt Dolehanty. She filed her notice of appearance with this Court on 11 March 2024. Major Saathoff and undersigned counsel have completed a thorough turnover of the record.

Undersigned counsel confirms that Capt Dolehanty provided limited authorization to disclose that which was necessary to satisfy this Court's rules. A copy of this motion will be delivered to Capt Dolehanty after this Court has acted upon the motion.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested motion.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
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 Government Trial and Appellate Operations Division on 13 March 2024.

Respectfully submitted,

N, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	15 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 (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 May 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 10 May 2023, pursuant to his pleas and a plea agreement, a Military Judge sitting in a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of fleeing arrest, in violation of Article 87, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 887 and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890. R. at 104. The Military Judge sentenced Appellant to be dismissed from the Air Force, to be confined for 59 days, and to be reprimanded. R. at 247. The Convening Authority took no actions on the findings or sentence and denied the Appellant’s request for waiver of all automatic forfeitures. *Convening Authority Decision on Action.*

The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits. The Appellant is not confined.

Appellate counsel is currently assigned four cases; This is her second priority case. Appellate counsel is a Reservist and has a full-time civilian job in the private sector serving clients. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not completed her review of Appellant's case. Appellate Counsel has Inactive Duty Training (IDT) days scheduled in April, May, and June to work on cases. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. One Air Force Court case has priority over the present case:

1. *United States v. Cunningham*, No. ACM 23010 – On 20 Dec 2022, consistent with his pleas, a military judge sitting as a Special Court-Martial convicted Appellant of one charge and one specification of drunken operation of a vehicle, in violation of Article 113 Uniform Code of Military Justice (UCMJ). The Military Judge sentenced Appellant to be reduced to the grade of E-3 and to be confined for 11 days. ROT, Vol. 1, Entry of Judgement 5 January 2023. On 12 June 2023, SrA Cunningham filed his Notice of Direct Appeal with this Court. Two days later this case was docketed, and a consent motion for production of the verbatim transcript was granted on 27 Jun 2023. On 4 Aug 2023, this Honorable Court granted a Motion to Attach the verbatim transcript. The ROT consists of 2 volumes, 14 prosecution exhibits, 4 defense exhibits, 11 appellate exhibits, and zero court exhibits. The trial transcript is 149 pages long. Appellant is not confined. A Motion for Enlargement of Time (Fifth) was filed and subsequently granted by this Court on 14 Feb 2024. Counsel has completed her review of the case but additional time is needed for the client to effectuate their decisions in the case. An Expansion of Time (Sixth) is pending before this court.

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

Respectfully submitted,

REBECCA J. SAATHOFF, 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 were sent via email to the Court and served on the Government Trial and Appellate Division on 15 April 2024.

REBECCA J. SAATHOFF, 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
)	
Captain (O-3)	)	ACM 40510
KRISTOPHER M. DOLEHANTY, USAF)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 16 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

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

UNITED STATES	)	No. ACM 40510
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Kristopher M. DOLEHANTY)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 14 April 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Sixth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 19th day of April, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Sixth) is **GRANTED**. Appellant shall file any assignments of error not later than **26 May 2024**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, continue to include a statement 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.

Appellant’s counsel should not rely on subsequent requests for enlargement of time being granted; each request will be considered on its merits. Appellant’s counsel are advised that any requests for future enlargements of time may necessitate a status conference prior to the court taking action on any forthcoming request. Further, Appellant’s counsel are advised that any future requests

for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted *absent exceptional circumstances*.



FOR THE COURT

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	NOTICE OF APPEARANCE
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 3
)	
Captain (O-3))	
KRISTOPHER M. DOLEHANTY,	)	No. ACM 40510
United States Air Force,)	
<i>Appellant.</i>	)	10 May 2024

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

COMES NOW the undersigned counsel, pursuant to Rule 13 of this Honorable Court's Rules of Practice and Procedure, and enters an appearance as counsel for Appellant.

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 were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 10 May 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,	)	CONSENT MOTION TO VIEW
<i>Appellee,</i>	)	SEALED MATERIALS
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	13 May 2024
<i>Appellant.</i>)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1, 23.1(b) and 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine Preliminary Hearing Officer (PHO) Exhibits 11, 12, 17, and 19 in the above-named case.

Facts

On 10 May 2023, pursuant to his pleas and a plea agreement, a Military Judge sitting in a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of fleeing arrest, in violation of Article 87, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 887 and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890. R. at 104. The Military Judge sentenced Appellant to be dismissed from the Air Force, to be confined for 59 days, and to be reprimanded. R. at 247. The Convening Authority took no actions on the findings or sentence and denied the Appellant’s request for waiver of all automatic forfeitures. *Convening Authority Decision on Action.*

As part of the plea agreement, the Convening Authority dismissed with prejudice additional alleged crimes Capt Dolehanty stood accused of (pursuant to the Plea Agreement, prejudice attaches at conclusion of appellate review). *Entry of Judgement*, 10 May 2023. During the Article

32, UCMJ 10 U.S.C. § 832 proceedings for these alleged offenses, the PHO received and attached video interviews of the named victims and alleged witnesses, as well as a Government motion pursuant to Military Rule of Evidence (M.R.E.) 412. *PHO Continuation Pages*, pg. 1. The PHO then sealed the following materials pursuant to R.C.M. 405(j)(8) and R.C.M. 1103A:

- 1) PHO Exhibit 11, AFOSI Video Interview of C.D. (Adult), conducted on 19 Dec 22
- 2) PHO Exhibit 12, Rainbow House Child Forensic Interview of C.N., conducted on 7 Mar 23
- 3) PHO Exhibit 17, Government MRE 412 Motion, dated 25 Mar 23 (7 pages)
- 4) PHO Exhibit 19, Audio Recording of Art. 32, UCMJ Preliminary Hearing Closed Session (contained in one file lasting 18:16)

Law

Appellate counsel may examine materials presented or reviewed at trial and sealed, as well as materials reviewed in camera, released to trial or defense counsel, and sealed, upon a colorable showing to the appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities under the UCMJ, the MCM, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct. R.C.M. 1113(b)(3)(B)(i).

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

¹ Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1 (11 Dec. 18).

² *Id.* at Rule 1.3.

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

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 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).

Analysis

The sealed exhibits identified in paragraphs (1)-(2) in the fact section above are video interviews of the named victims providing statements regarding allegations referred against Capt Dolehanty. The sealed exhibits identified in paragraphs (3)-(4) in the fact section above are a Government motion and the associated audio recording of the Article 32 hearing during which the motion (and its subject matter) was discussed. These exhibits were provided to the parties in advance of the Article 32, UCMJ hearing, and were sealed as part of the Article 32 report. Both Government and Defense counsel were present during the making of the sealed audio portion of the hearing. Thus, it is evident the parties “presented” and “reviewed” the sealed material.

It is reasonably necessary for Appellant’s counsel to review these sealed exhibits and for counsel to competently conduct a professional evaluation of Appellant’s case and to uncover all issues which might afford him relief. To do so, a review of the sealed records introduced and

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

created during the Article 32, UCMJ, hearing is necessary to evaluate whether there was any information Defense counsel should have considered when evaluating the benefit of entering into the plea agreement, as well as what legal risks the Appellant may face if his guilty plea is overturned for any reason.

Because examination of the materials in question is reasonably necessary to the fulfillment of counsel's Article 70, UCMJ duties, and because the materials were made available to the parties at the Article 32, UCMJ, hearing, Appellant has provided the "colorable showing" required by R.C.M. 1113(b)(3)(B)(i) to permit his counsel's examination of sealed materials and has shown good cause to grant this motion.

The Government consents to both parties viewing the sealed materials detailed above.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this consent motion.

Respectfully submitted,

REBECCA J. SAATHOFF, 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 were sent via E-Mail to the Court and served on the Government Trial and Appellate Division on 13 May 2024.

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

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

UNITED STATES	)	No. ACM 40510
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Kristopher M. DOLEHANTY)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 13 May 2024, counsel for Appellant submitted a Consent Motion to View Sealed Materials, requesting both parties be allowed to examine Preliminary Hearing Officer (PHO) Exhibits 11, 12, 17, and 19, which were reviewed by trial and defense counsel at Appellant’s preliminary hearing.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.).

The court finds Appellant has made a colorable showing that review of sealed materials is reasonably necessary for a proper fulfillment of appellate defense counsel’s responsibilities. This court’s order permits counsel for both parties to examine the materials. Accordingly, it is by the court on this 14th day of May 2024,

ORDERED:

Appellant’s Consent Motion to Examine Sealed Materials is **GRANTED**.

Appellate defense counsel and appellate government counsel may view **PHO exhibits 11, 12, 17, and 19** subject to the following conditions:

To view the sealed materials, counsel will coordinate with the court.

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court's prior written authorization.



FOR THE COURT

FLEMING E. KEEFE, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SEVENTH)
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	13 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 (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 June 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 256 days have elapsed. On the date requested, 300 days will have elapsed.

On 10 May 2023, pursuant to his pleas and a plea agreement, a Military Judge sitting in a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of fleeing arrest, in violation of Article 87, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 887 and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890. R. at 104. The Military Judge sentenced Appellant to be dismissed from the Air Force, to be confined for 59 days, and to be reprimanded. R. at 247. The Convening Authority took no actions on the findings or sentence and denied the Appellant’s request for waiver of all automatic forfeitures. *Convening Authority Decision on Action.*

The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 248 pages. The Appellant is not confined.

Undersigned counsel is currently assigned three cases. This is her first priority case. Undersigned counsel is a Reservist and has a full-time civilian job in the private sector serving clients. Undersigned counsel completed a review of the unsealed portion of Appellant's record of trial. In reviewing Appellant's record of trial, undersigned counsel became aware of sealed materials in Appellant's record. Undersigned counsel is unable to review these materials due to her geographic location. Maj Megan Crouch has been detailed as appellate defense counsel for Appellant to assist in the review of the sealed materials and filed her notice of appearance with this Court on 10 May 2024. Undersigned counsel filed a Consent Motion to View Sealed Materials for this case on 13 May 2024, which is pending review by this Court.

Since Appellant's last request for an enlargement of time, undersigned counsel filed a motion to withdraw from appellate review for *United States v. Cunningham*, No. ACM 23010. She also completed her review of the unsealed portions of the record of trial for *United States v. Dolehanty*, No. ACM 30513, researched legal issues, discussed the case with the client, and filed a Consent Motion to View Sealed Materials. She also began her review of the Record of Trial in *U.S. v. Veasley*, No. ACM 23009.

Through no fault of Appellant, undersigned counsel has not completed her review of Appellant's record of trial. Appellate Counsel has Inactive Duty Training (IDT) days scheduled in May and June to work on cases. Appellant is aware of his right to speedy appellate review. He has been provided an update of the status of his case. He is aware of this request for extension of time and agrees with it.

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

Respectfully submitted,

REBECCA J. SAATHOFF, 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 were sent via email to the Court and served on the Government Trial and Appellate Division on 13 May 2024.

REBECCA J. SAATHOFF, 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
)	
Captain (O-3)	)	ACM 40510
KRISTOPHER M. DOLEHANTY, USAF)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 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 out 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.

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 15 May 2024.

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

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

UNITED STATES	)	No. ACM 40510
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Kristopher M. DOLEHANTY)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 13 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 17th day of April, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **25 June 2024**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, continue to include a statement 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.

Appellant’s counsel should not rely on subsequent requests for enlargement of time being granted; each request will be considered on its merits. Appellant’s counsel are advised that any requests for future enlargements of time may necessitate a status conference prior to the court taking action on any forthcoming request.

Further, Appellant's counsel are further advised that any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted *absent exceptional circumstances*.



FOR THE COURT

FLEMING E. KEEFE, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (EIGHTH)
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	13 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 an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 July 2024**. The record of trial was docketed with this Court on 30 August 2023. From the date of docketing to the present date, 287 days have elapsed. On the date requested, 330 days will have elapsed.

On 10 May 2023, pursuant to his pleas and a plea agreement, a Military Judge sitting in a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of fleeing arrest, in violation of Article 87, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 887 and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890. R. at 104. The Military Judge sentenced Appellant to be dismissed from the Air Force, to be confined for 59 days, and to be reprimanded. R. at 247. The Convening Authority took no actions on the findings or sentence and denied the Appellant’s request for waiver of all automatic forfeitures. *Convening Authority Decision on Action.*

The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 248 pages. The Appellant is not confined.

Undersigned counsel is currently assigned three cases. This is her first priority case. Since Appellant's last request for an enlargement of time, undersigned counsel completed her review of the record of trial for *United States v. Dolehanty*, No. ACM 30513, researched legal issues, further analyzed the case, and advised the client on his case. She also began her review of the Record of Trial in *U.S. v. Veasley*, No. ACM 23009, and began her review of the Record of Trial in *U.S. v. Hoang*, No. ACM 22082.

Through no fault of Appellant, undersigned counsel has completed her review of the Record of Trial in this case but has not yet completed drafting the brief for filing with this court. Undersigned counsel requests this extension to file an AOE in this case. Undersigned counsel is a Reservist and has a full-time civilian job in the private sector serving clients. Appellate Counsel has Inactive Duty Training (IDT) scheduled in June to work on cases. Appellant is aware of his right to speedy appellate review. He has been provided an update of the status of his case. He is aware of this request for extension of time and agrees with it.

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

Respectfully submitted,

REBECCA J. SAATHOFF, 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 were sent via email to the Court and served on the Government Trial and Appellate Division on 13 June 2024.

REBECCA J. SAATHOFF, 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
)	
Captain (O-3)	)	ACM 40510
KRISTOPHER M. DOLEHANTY, USAF)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 a year long delay practically ensures this Court will not be able to issue a decision that complies with out 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. 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 17 June 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 40510
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Kristopher M. DOLEHANTY)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 13 June 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant’s assignments of error.* The Government opposes the motion.

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

Accordingly, it is by the court on this 20th day of June, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Eight) is **GRANTED**. Appellant shall file any assignments of error not later than **25 July 2024**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, include a statement 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.

* In Appellant’s motion, his counsel incorrectly states that “287 days have elapsed” from date of docketing to the present date. From the date of docketing to the date of Appellant’s motion (13 June 2024), 288 days have elapsed, not 287 days.

Appellant's counsel are further reminded that any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent *exceptional circumstances*.



FOR THE COURT

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	BRIEF ON BEHALF OF APPELLANT
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 3
)	
Captain (O-3),	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY,)	
United States Air Force,	)	22 August 2024
<i>Appellant.</i>)	

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

ASSIGNMENTS OF ERROR

I.¹

**WHETHER A PLEA AGREEMENT REQUIRING A DISHONORABLE
DISCHARGE FOR LOW-LEVEL OFFENSES RENDERS THE
PROCEEDING AN “EMPTY RITUAL” AND THUS VIOLATES PUBLIC
POLICY.**

II.

**WHETHER CAPTAIN DOLEHANTY’S SENTENCE IS
INAPPROPRIATELY SEVERE.**

STATEMENT OF THE CASE

On 10 May 2023, Appellant was tried by a general court-martial at Robins Air Force Base, Georgia. In accordance with his pleas, the military judge found Appellant guilty of one charge, one specification of fleeing arrest, in violation of Article 87a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 887a and one charge, one specification of failure to obey a lawful order, in violation of Article 90, UCMJ, 10 U.S.C. § 890.² The military judge sentenced Appellant to be dismissed from the Air Force, to be confined for a combined total of 59 days, and to be

¹ Issues I and II are raised in the Appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

² Entry of Judgement; R. at 104.

reprimanded.³ The Convening Authority took no actions on the findings or sentence and denied the Appellant's request for waiver of all automatic forfeitures.⁴

ISSUES AND ARGUMENT

The undersigned appellate defense counsel attests that she has, on behalf of Appellant, carefully examined the record of trial in this case. Appellant does not admit the findings or sentence are correct in law and fact, but submits the case to this Honorable Court on its merits. However, Appellant personally submits two errors for this Court's consideration.

Respectfully submitted,

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

³ Entry of Judgement; R. at 247.

⁴ Convening Authority Decision on Action.

APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matters:

I.

WHETHER A PLEA AGREEMENT REQUIRING A DISHONORABLE DISCHARGE FOR LOW-LEVEL OFFENSES RENDERS THE SENTENCING PROCEEDING AN “EMPTY RITUAL” AND THUS VIOLATES PUBLIC POLICY.

Facts

Captain (Capt) Dolehanty enlisted in the Air Force on or about 17 January 2006.⁵ He excelled in his duties and consistently performed above his peers. He represented the Air Force for 6 months in the Honor Guard,⁶ earned Senior Airman “Below-the-Zone”, and attained the rank of Master Sergeant in only 10 years.⁷ He then commissioned after being selected to one of the Air Force’s most prestigious and competitive programs, the Interservice Physician Assistant Program.⁸ Over the course of his 17 years of service to the Air Force, Capt Dolehanty deployed three times, including combat service in Iraq in 2009, and in Afghanistan in 2011.⁹

After his deployment to Afghanistan in 2011, Capt Dolehanty began experiencing symptoms which would be diagnosed a decade later as PTSD.¹⁰ He began to self-medicate with alcohol, a behavior which eventually evolved into a severe substance use disorder.¹¹ For the last several years of his service, including during the charged timeframe, Capt Dolehanty struggled with alcoholism, anxiety, depression, and PTSD.¹²

⁵ Pros. Ex. 2, page 1.

⁶ Pros. Ex. 3, page 1.

⁷ Pros. Ex. 3, page 19.

⁸ Pros. Ex. 3, page 20.

⁹ Pros. Ex. 2, page 1.

¹⁰ Declaration of Capt Kristopher Dolehanty, 21 Aug 2024 (hereinafter “Declaration”).

¹¹ *Id.*

¹² Clemency Request, dated 18 May 2023; Declaration.

On 16 November 2022, Capt Dolehanty was ordered to stay away from his ex-wife, C.D..¹³ On or about 23 February 2023, Capt Dolehanty's son had a presentation at school.¹⁴ Capt Dolehanty went to the school to support his son.¹⁵ That same day, C.D. used her lunch break to attend their son's presentation.¹⁶ Capt Dolehanty did not know C.D. was on her lunch break (which was not at a fixed time).¹⁷ While at the school Capt Dolehanty violated the distance he was required to stay from C.D., per the order he had received. However, at no point did he attempt to speak to C.D. or otherwise engage with her.¹⁸

On 27 February 2023, Capt Dolehanty was brought into the Office of Special Investigations ("OSI") at Robins Air Force Base.¹⁹ Misunderstanding the conditions of his presence at OSI, he attempted to leave the OSI building after he invoked his rights to counsel.²⁰ He was subsequently returned to the building by OSI agents.

Since then, Capt Dolehanty has suffered ongoing difficulty with his mental health conditions.²¹ In total, Capt Dolehanty has gone through five inpatient rehabilitation treatments with the latest being in summer 2024.²²

On 21 March 2023, Capt Dolehanty's commander preferred charges for violation of Article 92, UCMJ, 10 U.S.C. § 892 and Article 87a, UCMJ, 10 U.S.C. § 887a, in addition to other allegations, against Capt Dolehanty.²³ At the Article 32, UCMJ, Preliminary Hearing, the Preliminary Hearing Officer recommended the convening authority consider "whether it is worth

¹³ Pros. Ex. 1, pg 1.

¹⁴ Pros. Ex. 1, pg 2.

¹⁵ *Id.*

¹⁶ R. at 147.

¹⁷ R. at 147.

¹⁸ Pros. Ex. 1, pg 2; R. at 150-151.

¹⁹ Pros. Ex. 1, pg 2.

²⁰ Pros. Ex. 1, Attachment, Video (b): Video-Dolehanty-Fleeing OSI – 27 Feb 23.mp4.

²¹ Declaration.

²² *Id.*

²³ DD Form 458, Charge Sheet, dated 21 Mar 2023.

charging [original Charge II] as a violation of Art. 90, U.C.M.J., willfully disobeying a superior commissioned officer. While the Art. 92, U.C.M.J. charge is legally sufficient, the Military Protective Order regulating Capt Dolehanty's distance from C.D.] itself indicates that violation of the order constitutes an Art. 90, U.C.M.J. violation and it would minimize the inconsistencies in front of the factfinder."²⁴ Subsequently, Capt Dolehanty was charged with violation of Article 90, UCMJ, and the Article 92, UCMJ, violation was dismissed.²⁵

After charges were filed, Capt Dolehanty's counsel pursued a plea agreement on his behalf. During discussions with the legal office, it became known that the alleged victim in the case, C.D., would not support a plea agreement if the resulting conviction would not trigger the collateral consequence of firearm prohibition under 18 U.S.C. § 922(g).²⁶ The legal office then sought plea terms consistent with C.D's desire for firearms prohibition.²⁷ The plea agreement ultimately contained a provision which required the military judge to impose a dismissal as part of the sentence.²⁸

Capt Dolehanty faced Court-Martial on 10 May 2023. Pursuant to his pleas, the military judge found Capt Dolehanty guilty of violating Article 90, UCMJ, and Article 87(a), UCMJ.²⁹ During sentencing argument, Assistant Trial Counsel argued that the Article 90 conviction and dismissal triggered a firearm prohibition that protects society. He argued:

Now, Your Honor, under the sentencing principles that you are well aware of, protection of society is well served by the Article 90 conviction with the dismissal. He's going to be a convicted felon who's not going to be able to possess firearms, and that is a good, just result for somebody who has a reaction of yelling and swearing at a commander when receiving an order and running from law enforcement. This is somebody that we would

²⁴ Preliminary Hearing Officer Report, section n(2)(a).

²⁵ DD Form 458, Charge Sheet, dated 6 April 2023.

²⁶ Declaration.

²⁷ Declaration.

²⁸ Appellate Ex. III, pg. 2.

²⁹ Entry of Judgement.

worry about having guns, and this plea agreement does include terms that will protect society³⁰

Capt Dolehanty was ultimately sentenced to a dismissal, 59 days confinement for violation of Article 87a, UCMJ and 31 days confinement for violation of Article 90, UCMJ (to be served concurrently), and a reprimand.³¹

STANDARD OF REVIEW

Whether a condition of a plea agreement violates R.C.M. 705(c)(1)(B) is a question of law that this Court reviews *de novo*.³²

LAW

An accused may enter into a plea agreement with the convening authority.³³ The agreement may require an accused or the convening authority to fulfill promises or conditions unless barred by the Rule.³⁴ A plea agreement may contain a provision for a maximum punishment, a minimum punishment, or both.³⁵

Court-martial sentences must be individualized; they must be appropriate to the offender and the offense.³⁶ A court-martial shall impose punishment that is “sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces.”³⁷ Congress has established mandatory minimum sentences (i.e., dismissal or Dishonorable Discharge) for violations of certain punitive articles under the Code; Articles 90,

³⁰ R. at 226.

³¹ Entry of Judgement.

³² See *United States v. Tate*, 64 M.J. 269, 271 (C.A.A.F. 2007). Capt Dolehanty’s case implicates R.C.M. 705 from the 2019 *Manual of Courts-Martial*. However, the body of law on the plea agreement’s predecessor, the pretrial agreement, is still applicable, as this Court has recognized. See, e.g., *United States v. Marable*, 2021 CCA LEXIS 662, at *10 (A.F. Ct. Crim. App. 10 Dec. 2021) (“We find our superior court’s precedent with respect to [pretrial agreements] instructive when interpreting plea agreements.”).

³³ R.C.M. 705(a).

³⁴ R.C.M. 705(b), (c).

³⁵ R.C.M. 705(d)(1).

³⁶ *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

³⁷ Article 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1); R.C.M. 1002(f).

92, and 87(a) are not among them.³⁸

Terms in a plea agreement cannot be contrary to public policy.³⁹ Pretrial agreement provisions are contrary to public policy if they “interfere with court-martial fact-finding, sentencing, or review functions or undermine public confidence in the integrity and fairness of the disciplinary process.”⁴⁰ “To the extent that a term in a pretrial agreement violates public policy, it will be stricken from the pretrial agreement and not enforced.”⁴¹

“A fundamental principle underlying [the Court of Appeals for the Armed Forces’ (CAAF)] jurisprudence on pretrial agreements is that ‘the agreement cannot transform the trial into an empty ritual.’”⁴² It is the military judge’s “responsibility to police the terms of pretrial agreements to ensure compliance with statutory and decisional law as well as adherence to basic notions of fundamental fairness.”⁴³

This Court recently held, in an unpublished opinion for *United States v. Reedy*, that plea agreement terms requiring a minimum dishonorable discharge do not violate law or public policy.⁴⁴ However, various other Courts of Criminal Appeals (CCAs) have struck down provisions in pretrial agreements as violating public policy.⁴⁵ In *United States v. Libecap*, the Coast Guard Court of Criminal Appeals (CGCCA) addressed a pretrial agreement that required the accused to request a punitive discharge.⁴⁶ The CGCCA wrote that “whether or not to impose

³⁸ Article 56(b), UCMJ, 10 U.S.C. § 856(b).

³⁹ R.C.M. 705(e)(1).

⁴⁰ See *United States v. Raynor*, 66 M.J. 693, 697 (A.F. Ct. Crim. App. 2008) (citing *United States v. Cassity*, 36 M.J. 759, 762 (N.M.C.M.R. 1992)).

⁴¹ *United States v. Edwards*, 58 M.J. 49, 52 (C.A.A.F. 2003) (citing *United States v. Clark*, 53 M.J. 280, 283 (C.A.A.F. 2000); R.C.M. 705(c)(1)(B) (2002)).

⁴² *United States v. Davis*, 50 M.J. 426, 429 (C.A.A.F. 1999) (citing *United States v. Allen*, 25 C.M.R. 8, 11 (C.M.A. 1957)).

⁴³ *United States v. Partin*, 7 M.J. 409, 412 (C.M.A. 1979) (citation omitted).

⁴⁴ *United States v. Reedy*, 2024 CCA LEXIS 40, at *14 (A.F. Ct. Crim. App. Feb. 2, 2024).

⁴⁵ See, e.g., *Cassity*, 36 M.J. at 765 (holding a sentencing limitation promising the convening authority would only suspend a punitive discharge if more than four months confinement was adjudged at trial violated public policy and the military judge erred by not striking it from the agreement).

⁴⁶ 57 M.J. 611, 615 (C.G. Ct. Crim. App. 2002).

a punitive discharge as a part of the sentence in a court-martial is always a significant sentencing issue, and often is the most strenuously contested sentencing issue.”⁴⁷ While the provision at issue still allowed the presentation of a complete presentencing case, the CGCCA believed the request for a bad-conduct discharge undercut any presentation. The Court wrote:

[W]e are convinced that although such a sentencing proceeding might in some sense be viewed as complete, the requirement to request a bad conduct discharge would, in too many instances, largely negate the value of putting on a defense sentencing case, and create the impression, if not the reality, of a proceeding that was little more than an empty ritual, at least with respect to the question of whether a punitive discharge should be imposed. Therefore, we conclude that such a requirement may, as a practical matter, deprive the accused of a complete sentencing proceeding.⁴⁸

It reasoned that the Government had placed the appellant in a position where he would either be forced to forego a desirable deal or sacrifice a complete presentencing hearing.⁴⁹ For these reasons, the term violated public policy because the public would lose confidence in the integrity and fairness of the appellant’s court-martial.⁵⁰

The maximum discharge and confinement sentences for violation of Article 92, UCMJ, failure to obey a lawful order, is a bad conduct discharge and six months confinement.⁵¹ The maximum discharge and confinement sentences for violation of Article 87(a), UCMJ, resistance or flight from apprehension, is a bad conduct discharge and one year confinement.⁵² The maximum discharge and confinement sentences for violation of Article 90, UCMJ, willfully disobeying superior commissioned officer (not in time of war) is a dishonorable discharge and

⁴⁷ *Id.* at 615.

⁴⁸ *Id.* at 615–16.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Manual for Courts-Martial (2019 ed.), pt. IV, ¶ 18(d)(2); all references to the Manual for Courts-Martial are to the 2019 edition unless otherwise indicated.

⁵² MCM, pt. IV, ¶ 12(d).

five years confinement.⁵³ For officers, a dismissal may be adjudged for any offense which a commissioned officer is found guilty of at General Court-Martial, regardless of the maximum sentence for the offense.⁵⁴

ANALYSIS

Including a mandatory dismissal as a plea term for a case involving low-level offenses is contrary to public policy, and this Honorable Court should not enforce it. Capt Dolehanty was originally charged with Article 92, UCMJ, rather than Article 90, UCMJ. Article 90 carries a much higher maximum sentence (five years confinement compared to 6 months, and a dishonorable discharge compared to a bad conduct discharge), indicating it is a much more severe crime. The change from an Article 92, UCMJ, charge to an Article 90, UCMJ, charge occurred not because of the egregiousness of the facts, but because the Preliminary Hearing Officer recommended this change in order to increase the “inconsistencies” in the eyes of the factfinder.

The maximum sentence of the charges, were Capt Dolehanty enlisted, is illustrative of the seriousness of this crime. A convening authority has broad authority to refer charges and had the option to refer the later-referred Article 90, UCMJ charge at the time the original referral and referral occurred. Instead, the convening authority, with full knowledge of the facts, opted to refer a charge for Article 92. This prosecutorial choice demonstrates that Capt Dolehanty’s actions were not considered severe enough to warrant a punitive discharge or more than a year’s confinement.

Capt Dolehanty’s charges also fall far short of the type of offenses which would typically receive a dismissal. Disobeying an order and fleeing apprehension is a far contrast from the types

⁵³ MCM, pt. IV ¶ 16(d)(2).

⁵⁴ R.C.M. 1003(b)(8)(A).

of cases where Congress has established mandatory punitive discharges, which exclusively involve sexual violence.⁵⁵

The facts of Capt Dolehanty's case also lack the hallmarks of more serious offenses: there was no evidence presented of any injury or lasting harm resulting from his conduct, and no evidence presented that he attempted to physically injure anyone. To the contrary, C.D. testified that Capt Dolehanty never attempted to speak with her or interact. Further, the disobedience to the order was due to Capt Dolehanty's attempt to see his son's school presentation, and no evidence indicated he intentionally attended the presentation at the same time as the C.D. (in fact, the evidence indicates he could not have planned to do so, because her lunch hour was not at a fixed time).

The purpose of the Government demanding a dismissal as a plea term was made clear during Assistant Trial Counsel's argument, where they argued the protection of society was served by the collateral consequences of the Article 90 conviction and dismissal (i.e., the firearm prohibition). This is in line with the victim's demand for the firearm prohibition (a collateral consequence), and the Government seeking plea terms consistent with that demand. This provides insight behind the Government seeking the dismissal, demonstrating the purpose was to obtain the collateral consequence of firearm prohibition, as opposed to obtaining an appropriate sentence.

A punitive discharge is intended to reflect a characterization of the member's service in light of their misconduct. Here, the military judge was prevented from conducting this evaluation by virtue of the plea terms. Further, given the facts of the case, Capt Dolehanty's acquiescence to the plea deal terms fails to accomplish this task because he was forced between choosing between

⁵⁵ See Article 56(b), UCMJ, 10 U.S.C. § 856(b).

the benefits of a plea deal and a complete presentencing hearing, to include the military judge's full evaluation of his service characterization in light of the facts of his case.

It is unknown whether the military judge believed a dishonorable discharge was "not greater than necessary." However, when considering the history of the case, the facts of the charges Capt Dolehanty plead guilty to, and his military record, there is a strong argument that had the military judge been permitted to perform this function, it is unlikely a dismissal would have been adjudged. This is a distinct scenario from a case in which the facts are so egregious that the assessment of a punitive discharge or dismissal is almost a foregone conclusion; in such a situation, it is reasonable that a plea term requiring a dismissal may be appropriate. However, when a dismissal is required as part of a plea for low-level offenses, it interferes with the sentencing function of courts-martial and violates public policy by creating an inherently overly severe punishment (discussed further below), regardless of what the military judge ultimately assesses.

When a defendant negotiates for a plea, they are in an inherently disadvantage negotiating position. As a result, the Government has an obligation to ensure that the mandatory minimums it requires under a plea agreement will not create a situation where the sentence is "more than sufficient."⁵⁶ Requiring a mandatory minimum dismissal for low-level offenses prevents the military judge from being able to appropriately craft a sentence and disrupts their ability to ensure the ultimate sentence is "sufficient, but not greater than necessary."⁵⁷ It also disrupts public trust in the process by creating over-inflated sentences where there likely would not have been one, had the plea deal term not been enforced.

⁵⁶ Article 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1); R.C.M. 1002(f).

⁵⁷ *Id.*

For the reasons stated above, the specific facts of Capt Dolehanty’s case demonstrate the dismissal required under his plea deal violates public policy. As such, this Court should disapprove the dismissal.

II.

WHETHER CAPT DOLEHANTY’S SENTENCE IS INAPPROPRIATELY SEVERE STANDARD OF REVIEW.

This Court reviews sentence appropriateness *de novo*.⁵⁸

LAW

This Court “may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as [it] finds correct in law and fact and determines, on the basis of the entire record, should be approved.”⁵⁹ Considerations include “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.”⁶⁰ “The breadth of the power granted to the Courts of Criminal Appeals to review a case for sentence appropriateness is one of the unique and longstanding features of the [UCMJ].”⁶¹ This Court’s role in reviewing sentences under Article 66(d) is to “do justice,” as distinguished from the discretionary power of the convening authority to grant mercy.⁶²

A sister-service CCA has used this sentence appropriateness power under Article 66, UCMJ, to determine that even plea agreements which mandate a specific punitive discharge as part of the punishment may result in inappropriately severe punishments. In *United States v. Kerr*, the Navy-Marine Corps Court of Criminal Appeals concluded that the portion of the

⁵⁸ *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

⁵⁹ Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2019).

⁶⁰ *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (citations omitted).

⁶¹ *United States v. Hutchison*, 57 M.J. 231, 233 (C.A.A.F. 2002) (citations omitted).

⁶² See *United States v. Boone*, 49 M.J. 187, 192 (C.A.A.F. 1998).

appellant’s sentence that included a bad-conduct discharge was inappropriately severe and inappropriate “because of the matters presented in extenuation and mitigation,”⁶³ and set aside the bad-conduct discharge.⁶⁴ Although the plea agreement “required the military judge to adjudge a bad-conduct discharge,”⁶⁵ the Court concluded that the military judge “could have, and should have, simply rejected the plea agreement in its entirety.”⁶⁶

ANALYSIS

The task of the sentencing authority is to adjudge an appropriate sentence for the offense and the offender.⁶⁷ Taking into consideration the original charges, the facts surrounding the charged offenses, Capt Dolehanty’s life experiences, and his acceptance of complete responsibility, Capt Dolehanty’s dismissal is inappropriately severe.

Capt Dolehanty’s mental health conditions and severe substance use disorder had a serious impact on his health and wellbeing. Despite this, Capt Dolehanty honorably represented himself and the Air Force and performed at such an outstanding level that he was not only selected to become an officer, but he was selected to attend the prestigious and competitive Air Force Physicians’ Assistant program. As a physician’s assistant, Capt Dolehanty worked to take care of his patients, making the lives of Air Force members and their dependents better.

The facts of the crimes Capt Dolehanty plead guilty to were not of such an egregious nature to warrant a dismissal. A dismissal is the equivalent of a dishonorable discharge. As previously discussed, the originally referred Art. 92 charge is illustrative of the severity of Capt Dolehanty’s crime. For enlisted members, this offense does not carry the possibility of a

⁶³ *United States v. Kerr*, No. 202200140, 2023 CCA LEXIS 434, at *8 (N-M. Ct. Crim. App. Oct. 17, 2023).

⁶⁴ *Id.* at *9.

⁶⁵ *Id.* at *8, n.23.

⁶⁶ *Id.* at *8.

⁶⁷ *Snelling*, 14 M.J. at 268.

dishonorable discharge, and only carries a possibility of 6 months confinement. No change in facts occurred that resulted in the change to the later-charged Article 90; this was intended to “reduce inconsistencies,” per the Preliminary Hearing officer’s Recommendation, and to obtain the collateral consequence of firearm prohibition, as indicated by the Assistant Trial Counsel’s sentencing argument and the victim’s demands. These facts collectively demonstrate that the dismissal required from the plea deal was never about Capt Dolehanty’s actions, but rather the effect of external considerations beyond obtaining an appropriate sentence.

The facts of Capt Dolehanty’s case demonstrate that a dismissal is an overly severe form of punishment for the charges he plead guilty to. There was no evidence before the court that any alleged victim or law enforcement member was injured or had any lasting impact from the alleged offenses. In addition, the low confinement time and lack of forfeitures or fines assessed indicates there is a real possibility the military judge would not have found Capt Dolehanty’s conduct warranted a dismissal had one not been made mandatory by the plea deal. The judge assessed 59- and 31-days confinement for the offenses, to be served concurrently. The more serious of the allegations, based on maximum sentence, was the violation of Article 90. For this charge, the military judge only sentenced Capt Dolehanty to 31 days confinement. Balanced against Capt Dolehanty’s 17 years of service, these light sentences indicate the dismissal was not warranted by the facts of his case.

A dismissal (the officer’s equivalent of a dishonorable discharge) is one of the most severe punishment a court-martial can impose.⁶⁸ This punishment is not warranted by the fact of Capt Dolehanty’s case, or his history of service. Similar to *Kerr*, the military judge in *Ann Williams*’ case “could have, and should have, simply rejected” the portion the plea agreement

⁶⁸ *United States v. Briscoe*, 13 U.S.C.M.A. 510, 512 (C.M.A. 1963).

that mandated a dismissal as part of the adjudged sentence by the court-martial.

“The role of trial judges (and appellate judges) as ultimate assessors of the sentence appropriateness has become all the more important” with plea agreements.⁶⁹ This Honorable Court should exercise its authority under Article 66, UCMJ, and disapprove the dismissal as inappropriately severe.

WHEREFORE, Capt Dolehanty respectfully requests this Honorable Court disapprove his dismissal, leaving his underlying conviction in place.

⁶⁹ *Kerr*, 2023 CCA LEXIS 434, at *8.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 22 August 2024.

REBECCA J. SAATHOFF, 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,	)	MOTION TO ATTACH APPENDIX A
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 3
)	
Captain (O-3))	
KRISTOPHER M. DOLEHANTY,	)	No. ACM 40510
United States Air Force,)	
<i>Appellant.</i>	)	22 August 2024

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

Pursuant to Rules 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves to attach the following document to the Record of Trial:

Declaration of Captain Kristopher Dolehanty, 1 page, 21 August 2024 (Appendix A).

Appendix A is an affidavit from the Appellant, regarding facts surrounding the plea negotiations and his mental health during the charged timeframe. Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), this motion and affidavit is raised pursuant to and in support of Capt Dolehanty’s submission of matters, in which he, through appellate defense counsel, personally raises two issues. Because the record does not document Government considerations during plea negotiations, nor does it provide the breadth of Capt Dolehanty’s personal struggles, this declaration is needed to resolve the issues of whether the mandatory dismissal plea term in Capt Dolehanty’s plea agreement violates public policy, and whether his sentence is overly severe.

These matters may be attached for this Court’s consideration pursuant to Article 66, UCMJ, as these declarations supplement matters raised in the record – that is, the extent of Capt Dolehanty’s personal struggles, and the context behind Assistant Trial Counsel’s argument at trial regarding firearm prohibition– and the issue is of central importance in determining whether Capt

Dolehanty's dismissal went against public policy or was an overly severe punishment. Because this conduct is not documented, there is no other way for this Court to consider the extent to which the plea term and dismissal violates public policy or is overly severe based on the specific facts of Capt Dolehanty's case and who he is as an individual. This is not fully resolvable by the record without this declaration. *See United States v. Jessie*, 79 M.J. 437, 445 (C.A.A.F. 2020).

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the motion to attach.

Respectfully submitted,

REBECCA J. SAATHOFF, 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 were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 22 August 2024.

REBECCA J. SAATHOFF, Maj, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>)	UNITED STATES’ OPPOSITION TO APPELLANT’S MOTION TO ATTACH
v.)	
Captain (O-3)	)	Before Panel No. 3
KRISTOPHER M. DOLEHANTY,	)	No. ACM 40510
United States Air Force)	
<i>Appellant.</i>	)	27 August 2024

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

Under Rule 23.2 of this Honorable Court’s Rules of Practice and Procedure, the United States opposes Appellant’s motion to attach Appendix A – his declaration signed 21 August 2024. One of the terms of Appellant’s successfully negotiated plea agreement in this case was a minimum sentence of a dismissal. (ROT, Vol. 2, App. Ex. III). Appellant asserts that the minimum sentence of a dismissal in his plea agreement violates public policy and that his sentence is inappropriately severe. (App. Br. at 1¹). Appellant claims that the record does not document the Government’s considerations in negotiating the plea agreement which Appellant asserts included that the named victim, C.D. “would only agree to a plea deal if it triggered firearm prohibition under 18 U.S.C. § 922.” (App. Mot. at 4). Appellant argues that this portion of Appendix A is relevant because the context behind Assistant Trial Counsel’s reference to firearms prohibition in closing argument is “of central importance” for determining whether Appellant’s dismissal went against public policy or was overly severe punishment. *Id.* at 1-2.

¹ Appellant refers to his discharge as a “dishonorable discharge” but Appellant, as an officer, received a dismissal.

Appellant also claims that the record does not document the breadth of his personal struggles. Particularly, Appellant’s “anxiety, depression, and post-traumatic stress disorder (PTSD) (diagnosed in 2021),” as well as his alcohol substance abuse treatment. (App. Mot. Appendix A).

Our superior Court has held that Appellant’s may supplement the record with affidavits when claims and issues raised by the record are not fully resolvable by the materials in the record. United States v. Jessie, 79 M.J. 437, 442 (C.A.A.F. 2020) (internal citations omitted). This Court requires the movant to explain the relevance and necessity of the supplement to the case. (A.F. Ct. Crim. App. R. 23.3(b)). This case is fully resolvable by the materials in the record. This Court should deny Appellant’s motion to attach for three reasons: 1) Appellant’s anxiety, depression, and alcohol abuse is found in the record; 2) Appellant had the opportunity to introduce evidence of his PTSD and substance abuse treatment at trial and through clemency but chose not to; 3) the named victim’s alleged preference for a collateral consequence is not necessary to address Appellant’s assignments of error.

1. The record contains information regarding Appellant’s claim of anxiety, depression, and alcohol abuse.

Appellant’s request for clemency states, “As you know, I have been fighting alcoholism, anxiety, and depression for the last several years. At first, I believed I didn’t need help and that I could do it on my own. However, I finally realized that I had a serious problem and that I was in denial...I have been taking the required steps towards healing and rehabilitation...” (ROT, Vol. 2). Because this information is found within the record and is available for this court to weigh in evaluating Appellant’s assignments of error, the portion of Appellants declaration referring to his anxiety, depression, and self-medication with alcohol is not necessary to resolve his assignments of error. Therefore, this Court should deny his motion to attach.

2. Appellant had the opportunity to introduce evidence of his 2021 PTSD diagnosis as well as his substance abuse treatment since 2019 but chose not to.

While Appellant's 2021 PTSD diagnosis and five instances of inpatient treatment for alcohol abuse since 2019 are not within the record, Appellant had ample opportunity to make it part of the record through his unsworn statement, sentencing documents, and clemency during his trial in 2023. Despite these opportunities, Appellant chose not to include this information and to only refer to his treatment in vague language of taking "required steps towards healing and rehabilitation." (ROT, Vol. 2). Because Appellant had the opportunity to include these matters in the record, but chose not to, he should not now get the opportunity to provide this Court with additional facts. *See Jessie*, 79 M.J. at 442.

3. The named victim's alleged preference for a collateral consequence is not necessary to address Appellant's assignments of error.

Appellant's assertion that Trial Counsel sought a dismissal to satisfy the named victim's interest in a firearms prohibition as a collateral consequence is not relevant to whether Appellant's sentence is inappropriately severe. Nor is it necessary to evaluate whether his agreed upon term to a minimum sentence of a dismissal is contrary to public policy.

Even if the named victim wanted Appellant to have a firearms prohibition and the Government sought a plea agreement with terms to meet that preference, a dismissal was not required to accomplish that. 18 U.S.C. § 922 does not require a dismissal to trigger firearms prohibition. The firearms prohibition would be triggered automatically by the finding of guilt for a crime punishable by imprisonment for a term exceeding one year. 18 U.S.C. § 922(g). The maximum sentence for a violation of Article 90, UCMJ includes a term of confinement for 5 years. Manual for Courts-Martial, United States, part IV, para. 16.d(2) (2019 ed.). Appellant's plea to the charge of violating Article 90, UCMJ triggered firearms prohibition. Because of this,

Appellant's claim that the named victim preferred him to receive a firearms prohibition is not relevant for determining whether his dismissal was inappropriately severe or in violation of public policy.

Appellant's assignments of error are fully resolvable by the facts in the record.

Appellant's PTSD diagnosis and alcohol abuse treatment could have been introduced at trial.

Appellant's claim that the named victim wanted him to receive a firearms prohibition is not necessary for resolving his assignments of error.

WHEREFORE, the United States respectfully requests this Court deny Appellant's motion to attach Appendix A.

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations Division
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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 27 August 2024.

HEATHER R. BEZOLD, Capt, USAF
Appellate Government Counsel
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,	)	ANSWER TO ASSIGNMENTS OF
<i>Appellee,</i>	)	ERROR
)	
v.	)	Before Panel No. 3
)	
Captain (O-3)	)	No. ACM 40510
KRISTOPHER M. DOLEHANTY)	
United States Air Force	)	16 September 2024
<i>Appellant.</i>)	

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

ISSUES PRESENTED¹

I.

WHETHER A PLEA AGREEMENT REQUIRING A [DISMISSAL]² FOR LOW-LEVEL OFFENSES RENDERS THE PROCEEDING AN “EMPTY RITUAL” AND THUS VIOLATES PUBLIC POLICY.

II.

WHETHER [APPELLANT’S] SENTENCE IS INAPPROPRIATELY SEVERE.

STATEMENT OF CASE

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

¹ Appellant raises all issues pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

² Appellant refers to his discharge as a “dishonorable discharge.” As an officer, Appellant agreed to and received a dismissal, and it is described as such throughout this brief.

STATEMENT OF FACTS

Appellant's Violation of a Lawful Order

On 16 November 2022, Appellant received military protective order from Colonel M.M. (ROT Vol. 2, Pros. Ex. 1, *Stipulation of Fact*). The order directed Appellant to remain at least 1000 feet away from Appellant's ex-wife, C.D. Id. The order was issued after Colonel M.M. received reports that Appellant had engaged in domestic violence, stalking, and child endangerment. Id. On or about 23 February 2023, Appellant went to his son's school to watch him perform at an event. Id. While there, Appellant saw C.D. and knew he was within 1000 feet of her. Rather than leave, Appellant remained approximately 3-4 feet from C.D. Id.

Appellant Fleeing Apprehension

On 27 February 2023, Appellant was escorted to the Air Force Office of Special Investigations (OSI) office at Robins Air Force Base. Id. While there, Appellant was informed he was being detained and had to remain at the OSI office as they completed the administrative pieces of the interview. Less than two minutes later, Appellant attempted to leave the building. While gathering his items from the storage locker, an OSI agent again told Appellant he needed to remain in the interview room and that he was being apprehended. Appellant argued with the agent about whether he was able to be apprehended. As he argued with the agent, another agent positioned himself between Appellant and the exit door. Appellant pushed past the agent at the door and exited the building. He was then tackled to the ground but continued to resist arrest until he was secured in handcuffs. Id.

Contrary to Appellant's assertion, nothing in the record indicates there was any misunderstanding regarding the conditions of Appellant's presence at the OSI office or his ability to leave. (App. Br. at 4). Appellant stipulated that he was clearly informed he was being

apprehended and was to remain at the OSI office, that he knew the special agent was authorized to apprehend him, and that he actively fled from apprehension after being told he was not free to leave. (ROT Vol. 2, Pros. Ex. 1, *Stipulation of Fact*). Appellant also confirmed his understanding during a colloquy with the military judge. (R. at 46-53.)

Original Charges

On 21 March 2023, Appellant's commander preferred seven charges against him. Aside from the two charges he agreed to plead guilty to, the remaining charges included:

1. One charge and four specifications of violating Article 120, UCMJ, by penetrating his ex-wife's vulva with his fingers without her consent, penetrating his ex-wife's vulva with the handle of a hairbrush without her consent, penetrating his ex-wife's vulva with his penis, with and without causing bodily harm, without her consent.
2. One charge and one specification of violating Article 128, UCMJ, by assaulting his ex-wife by strangling her with his hand on divers occasions.
3. One charge and two specifications of violating Article 128b, UCMJ, by striking his stepson on the face with a belt and by strangling his ex-wife on divers occasions.
4. One charge and one specification of violating Article 133, UCMJ, by kissing a Technical Sergeant on the cheek.
5. One charge and one specification of violating Article 134, UCMJ, by engaging in indecent conduct consisting of walking around in only a thong in front of M.C.

The commander preferred an additional charge for violating Article 128b, UCMJ, for striking his stepson in the face with his hand. (ROT, Vol. 2, *Charge Sheet*).

Charge Reclassification

The 21 March 2023 preferral of the charges included a violation of Article 92, UCMJ, for violating Colonel M.M.'s order to remain 1000 feet from Appellant's ex-wife. (ROT, Vol. 2, *Charge Sheet*). The military protection order stated that a violation of the order constitutes a violation of Article 90, UCMJ. (ROT, Vol. 3, *Military Protection Order*, block 8). At the Article 32 preliminary hearing, the preliminary hearing officer recommended changing the charge from a violation of Article 92 to a violation of Article 90 to minimize inconsistencies between the face of the military protection order and the specification. (ROT Vol 3, *Preliminary Hearing Officer's Report*, section n(2)(a)). Following this recommendation, on 11 April 2023, Appellant's commander withdrew and dismissed Charge II and re-preferred the charge as a violation of Article 90, UCMJ. (ROT. Vol. 2, *Charge Sheet*).

Appellant's Offer to Plead Guilty

On 9 May 2023, Appellant successfully negotiated a plea agreement with the convening authority. (ROT Vol. 2, App. Ex. III, *Offer for Plea Agreement*). As part of that agreement, Appellant agreed to a minimum sentence of a dismissal. Id. The Government agreed to withdraw and dismiss the following charges and specifications:

1. Charge III for violating Article 120, UCMJ, and its four specifications.
2. Charge IV for violating Article 128, UCMJ, and its specification.
3. Charge V for violating Article 128b, UCMJ, and its two specifications.
4. Charge VI for violating Article 133, UCMJ, and its specification.
5. Charge VII for violating Article 134, UCMJ, and its specification.
6. Additional Charge for violating Article 128b, UCMJ, and its specification.

(App. Ex. III, *Offer for Plea Agreement*). Appellant agreed to not object to the Government introducing a Letter of Reprimand (LOR) detailing the facts of the six dismissed charges. The LOR detailed that Appellant penetrated C.D.’s vulva with his fingers and a hairbrush without her consent, repeatedly strangled C.D. with his hand while sexually assaulting her, assaulted his stepson by striking him on the face and chest with a leather belt, and attempted to kiss a Technical Sergeant without her consent and did kiss the Technical Sergeant on the cheek when she turned away. (ROT Vol. 2, App Ex. III, Pros Ex. IV).

ARGUMENT

I.³

APPELLANT’S PLEA AGREEMENT INCLUDING A MINIMUM SENTENCE OF A DISMISSAL DOES NOT VIOLATE PUBLIC POLICY

Standard of Review

Whether a condition of a plea agreement violates Rule for Courts-Martial (R.C.M.) 705(c)(1)(B) is a question of law that this Court reviews de novo. United States v. Tate, 64 M.J. 269, 271 (C.A.A.F. 2007).

Law and Analysis

A plea agreement between an accused and the convening authority may contain a provision for a maximum punishment, a minimum punishment, or both. R.C.M. 705(d)(1). “To the extent that a term in a pretrial agreement violates public policy, it will be stricken from the pretrial agreement and not enforced.” United States v. Edwards, 58 M.J. 49, 52 (C.A.A.F. 2003) (citing R.C.M. 705(c)(1)(B)). Plea agreements which have the effect of transforming sentencing proceedings into “an empty ritual” are impermissible. United States v. Reedy, 2024 CCA

³Appellant raises this issue pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

LEXIS 40, *8 (A.F. Ct. Crim. App. 2 Feb 2024) (internal citations omitted). This Court has found that plea agreement provisions requiring a military judge to sentence an appellant to a punitive discharge do not violate the United States Constitution, UCMJ, or public policy. United States v. Conway, 2024 CCA LEXIS 290, *12 (A.F. Ct. Crim. App. 19 July 2024) (citing Reedy, 2024 CCA LEXIS 40 at *13-14, United States v. Kroetz, No. ACM 40301, 2023 CCA LEXIS 450, 2023 LEXIS 450, at *17 (A.F. Ct. Crim. App. 27 Oct. 2023) (unpub. op.); United States v. Geier, No. ACM S32679 (f rev), 2022 CCA LEXIS 468, at *13 (A.F. Ct. Crim. App. 2 Aug. 2022) (unpub. op.), *rev denied*, 83 M.J. 86 (C.A.A.F. 2022)).

A. The minimum sentence of a dismissal did not render the sentencing proceeding an empty ritual.

R.C.M. 705(d)(1) expressly authorizes both maximum and minimum punishments. The use of minimum punishment terms does not render the proceeding an empty ritual. Appellant argues that the mandatory minimum sentence term prevented the military judge from conducting an evaluation as to whether the punishment was sufficient, but not greater than necessary. (App. Br. at 11). As this Court explained in Reedy, a mandatory minimum discharge does not preclude the sentencing authority's ability to determine an appropriate sentence. 2024 CCA LEXIS at 13-14. "The sentencing proceeding provided Appellant an opportunity to put forward evidence in mitigation and extenuation, call witnesses, and provide argument, including whether any sentence component was appropriate." Id. Appellant chose to put forward only an unsworn statement. (ROT Vol. 2, Def. Ex. A). His counsel provided argument on what he viewed as an appropriate punishment. (R. at 233, 236). Therefore, the minimum sentence term did not render Appellant's sentencing proceeding an empty ritual.

B. The minimum sentence term did not interfere with the court-martial sentencing proceeding.

Nothing in the record indicates that the minimum sentence term interfered with the sentencing proceedings. Appellant misunderstands the applicability of a dismissal when he claims that the decision to originally charge his conduct as a violation of Article 92 rather than Article 90 demonstrates that his offense was not severe enough to warrant a punitive discharge. (App. Br. at 9). R.C.M. 1003(b)(8)(A) states “Regardless of the maximum punishment specified for an offense in Part IV of this Manual, a dismissal may be adjudged for any offense of which a commissioned officer ... has been found guilty.” Whether Appellant was found guilty of Article 92 or Article 90 was irrelevant. A dismissal was always a potential sentence for any conviction of an officer. The change does not impact whether or not his agreement to a minimum term of a dismissal is appropriate.

Appellant contends that the mandatory minimum sentence of a dismissal was not to ensure the punishment was sufficient, but not greater than necessary. He asserts, without evidence, that it was instead included to accomplish his ex-wife’s demand that he receives a firearms prohibition as a collateral consequence. (App. Br. at 10). This argument ignores the following four facts: 1) 18 U.S.C. § 922(g) triggered a firearms prohibition for the conviction of violating Article 90 even without the dismissal due to it carrying the possibility of more than a year of confinement; 2) the charge was changed almost a month prior to Appellant’s offer for plea agreement; 3) Appellant engaged in significant additional misconduct, including violent and sexual offenses that were dismissed as part of his plea agreement and instead introduced in the LOR dated 1 May 2023; and 4) Appellant had prior misconduct of drug abuse and interfering in an investigation. (ROT Vol 2, Pros. Ex. 6). These facts directly cut against any assertion that the

mandatory minimum sentence was included for any reason other than to ensure a sufficient punishment was adjudged based on Appellant's conduct.

C. Appellant's minimum sentence to a dismissal did not undermine public confidence in the integrity and fairness of the disciplinary process.

Appellant contends that the minimum sentence to a dismissal "falls short of the type of offenses which would typically receive a dismissal" because disobeying an order and fleeing apprehension is "a far contrast from the types of cases where Congress has established mandatory punitive discharges." (App. Br. at 9-10). In Reedy, this Court rejected a similar argument. This Court found it was not impermissible to have a minimum sentence term in a plea agreement even where no minimum sentence existed for the appellant's offense stating, "We are not convinced Congress intended to limit plea agreements for offenses they did not list as having mandatory minimums." Reedy, 2024 CCA LEXIS at 12.

Appellant claims that his case should be decided differently than Reedy because receiving a dismissal for "low-level offenses" "disrupts public trust in the process by creating over-inflated sentences where there likely would not have been one." (App. Br. at 11). "Appellant was free to not sign the plea agreement." Reedy, 2024 CCA LEXIS at 13. Instead, Appellant chose to sign the agreement and receive the significant benefit of having six charges and totaling ten specifications addressed through an LOR rather than a court-martial. These charges are of the type Appellant considers "so egregious that the assessment of a [dismissal] is almost a foregone conclusion" (App. Br. at 11) because they encompass sexual assault, physical assault by strangulation, domestic violence and indecent conduct. These details of Appellant's strategic decision in negotiating his plea agreement renders his argument that his sentence was over-inflated and violates public policy unpersuasive.

The minimum sentence to a dismissal in Appellant’s plea agreement did not violate public policy. It was not only a permissible term, but also did not render the sentencing proceeding an empty ritual, interfere with the court-martial sentencing function, or undermine public confidence in the integrity and fairness of the disciplinary process.

II.

APPELLANT’S SENTENCE IS NOT INAPPROPRIATELY SEVERE.⁴

Additional Facts

Appellant chose to not submit any matters in mitigation during sentencing aside from his written unsworn statement. (ROT Vol. 2, Def. Ex. A).

On 29 September 2021, Appellant received a LOR for abusing over-the-counter medication and using his rank and position to influence a subordinate to cancel labs to test for the medication he abused. (ROT Vol. 2, Pros. Ex. 6).

Standard of Review

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

Law and Analysis

Under 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)).

⁴ Appellant raises this issue pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

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). “Absent evidence to the contrary, [an] accused’s own sentence proposal is a reasonable indication of its probable fairness to him.” United States v. Cron, 73 M.J. 718, 739 n.9 (A.F. Ct. Crim. App. 2014) (citation omitted).

Although this Court has discretion to determine whether a sentence is appropriate, it has “no power to ‘grant mercy.’” Hamilton, 77 M.J. at 587 (internal citation omitted); *see also* United States v. Walters, 71 M.J. 695, 698 (A.F. Ct. Crim. App. 2012).

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.

A. Appellant’s plea agreement indicates the fairness of his dismissal.

Appellant successfully negotiated a plea agreement leading to the withdraw of six serious charges, covering 10 specifications, in exchange for a minimum sentence of a dismissal.

Appellant was clear with the trial court that he expressly desired the dismissal to be a term

binding on the court. (R. at 81.) He was aware of the lasting effects of a dismissal. (R. at 82.) Appellant's agreement to the dismissal is indicative of its probable fairness to him. Cron, 73 M.J. at 739 n.9. He now asks this Court to re-define the parameters of that deal so that he may have the best of both worlds; the withdraw of six serious charges and no dismissal. This Court should decline to do so by denying relief.

B. Appellant's sentence appropriately reflects the conduct for which he was convicted.

While under investigation for harassing his ex-wife and committing maltreatment and acts of violence against his children, Appellant was ordered to not come within 1000 feet of his ex-wife. (ROT, Vol. 2, Pros. Ex. 1). Despite this order, Appellant chose to go to his son's school performance. While he may not have known his ex-wife was going to be there, once he saw her, he chose not to leave. (R. at 58, 63.) Such a blatant violation of his commander's direct order, especially by a Captain, is a serious offense.

When brought in by OSI, Appellant was clearly told that he was being detained, that he was not free to leave, that he was being apprehended, and that he needed to return to the interview room. (R. at 45, 46, 165.) Appellant deliberately disregarded these instructions and pushed past the OSI agent blocking his exit. (ROT, Vol. 2, Pros. Ex 1). The agent grabbed Appellant's arm and felt Appellant trying to pull away from him. (R. at 169.) Once outside, the OSI agent got Appellant on the ground but continued to feel resistance from Appellant. (R. at 170.) It took a second verbal command for Appellant to comply. Id. There was no misunderstanding as to whether Appellant could leave the OSI building.

Appellant's behavior was unacceptable for any Airman but especially for a Captain with 17 years of service. An officer who flagrantly shows disregard for the orders of those over him and who flees apprehension by law enforcement until he is tackled and physically restrained

deserves a dismissal. Such punishment was necessary to promote justice and maintain good order and discipline in the Air Force. *See* R.C.M. 1002(c). Appellant's sentence to a dismissal and confinement for 59 days was not an inappropriate sentence based on the nature and seriousness of his offense.

C. Appellant's disciplinary record further supports that a dismissal was not an inappropriate sentence.

The record contains two LORs that capture Appellant's misconduct during service. The first LOR includes that Appellant penetrated his ex-wife with his fingers and a hairbrush without her consent, strangled his ex-wife, and struck his 12-year-old stepson in the face with his hand and a leather belt. Appellant's misconduct also extended to enlisted airmen in his work center. He pretended to lose his key as a ruse to get a subordinate alone and then attempted to kiss her without her consent. He texted another female subordinate that she should send her "friends with high libidos and low self-esteem" his way for some "vitamin D therapy." Finally, the LOR details that Appellant made numerous false statements regarding his licensing, alcohol and drug abuse, and clinical privileges. (ROT Vol. 2, App. Ex. VII). The second LOR details Appellant's drug abuse and using his rank and position to interfere in the investigation into his drug abuse. (ROT Vol. 2, Pros. Ex. 6). Appellant's history of misconduct showed his lack of rehabilitative potential and supports that a dismissal was not an inappropriately severe sentence.

Appellant relies on the Navy-Marine Corps Court of Criminal Appeals holding in United States v. Kerr, 2023 CCA LEXIS 434, *8 (N.M. Ct. Crim. App. 17 October 2023) to argue that this Court should overturn his negotiated dismissal as inappropriately severe. In Kerr, the court found appellant's bad-conduct discharge for larceny was inappropriately severe given his exceptional performance in training, acts of heroism in Afghanistan, life-saving actions, and the mental stress and traumas he incurred in the marine corps. Id. at 7-8. The appellant's exemplary

acts of service and the post-traumatic stress disorder he suffered upon returning from Afghanistan were detailed in the record along with numerous highly laudatory character statements. Id. The record from Appellant's case lacks all the facts of mitigation and extenuation that led our sister-service court to find the discharge inappropriately severe. Appellant presented no evidence of exceptional service, life-saving actions, or acts of heroism. He presented no character statements or any evidence in mitigation at all. Appellant's selection to become an officer, his job as a physician's assistant, and his struggle with alcoholism are not similar to the service record detailed in Kerr. This Court should decline to find that his service is sufficient mitigation to outweigh the nature and seriousness of the offense and his disciplinary record such that a dismissal is inappropriately severe.

Appellant's sentence is not inappropriately severe. It is what he successfully negotiated for and reflects the nature and seriousness of the crimes he committed while considering the service member and all matters in the record. This Court should deny this assignment of error.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the 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 16 September 2024.

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