UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM S32778**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Christian M. BLAIR	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 3 June 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government 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 5th day of June, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **20 August 2024.**

Beginning with the fifth request 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.

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

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(FIRST)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
CHRISTIAN M. BLAIR,	)	No. ACM S32778
United States Air Force,	)	
Appellant.	)	3 June 2024

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court's Rules of Practice and Procedure, Senior Airman (SrA) Christian M. Blair, Appellant, hereby moves for an enlargement of time to file his assignments of error. SrA Blair requests an enlargement for a period of 60 days, which will end on **20 August 2024**. The record of trial was docketed with this Court on 22 April 2024. From the date of docketing to the present date, 42 days have elapsed. On the date requested, 120 days will have elapsed.

Through no fault of SrA Blair, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors.

WHEREFORE, SrA Blair respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

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 3 June 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

3 June 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
Senior Airman (E-4) CHRISTIAN M. BLAIR, USAF, *Appellant.*	)	ACM S32778 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
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

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

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(SECOND)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4)	)	
CHRISTIAN M. BLAIR,	)	No. ACM S32778
United States Air Force,	)	
Appellant.	)	9 August 2024

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, Senior Airman (SrA) Christian M. Blair, Appellant, hereby moves for a second enlargement of time to file his assignments of error. SrA Blair requests an enlargement for a period of 30 days, which will end on **19 September 2024**. The record of trial was docketed with this Court on 22 April 2024. From the date of docketing to the present date, 109 days have elapsed. On the date requested, 150 days will have elapsed.

On 30 October 2023, SrA Blair was convicted at a special court-martial before a military judge alone, consistent with his plea, of one charge and specification of drunken operation of a vehicle in violation of Article 113, Uniform Code of Military Justice (UCMJ),[1] 10 U.S.C. § 913. R. at 64; Entry of Judgment. The military judge sentenced him to 90 days' confinement, a bad-conduct discharge, reduction to the pay grade of E-1, and a reprimand. R. at 187; Statement of Trial Results. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

[1] Unless otherwise noted, all references to the UCMJ are to the version included in the *Manual for Courts-Martial, United States* (*MCM*) (2019 ed.).

The record of trial consists of 7 prosecution exhibits, 22 defense exhibits, and 6 appellate exhibits. The transcript is 187 pages. SrA Blair is not confined.

Through no fault of SrA Blair, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SrA Blair was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

WHEREFORE, SrA Blair respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

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 9 August 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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13 August 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) CHRISTIAN M. BLAIR, USAF, *Appellant.*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM S32778 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.

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 13 August 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** United States Air Force,	)	No. ACM S32778
Appellant.	)	10 September 2024

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, Senior Airman (SrA) Christian M. Blair, Appellant, hereby moves for a third enlargement of time to file his assignments of error. SrA Blair requests an enlargement for a period of 30 days, which will end on **19 October 2024**. The record of trial was docketed with this Court on 22 April 2024. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

On 30 October 2023, SrA Blair was convicted at a special court-martial before a military judge alone, consistent with his plea, of one charge and specification of drunken operation of a vehicle in violation of Article 113, Uniform Code of Military Justice (UCMJ),[1] 10 U.S.C. § 913. R. at 64; Entry of Judgment. The military judge sentenced him to 90 days' confinement, a bad-conduct discharge, reduction to the pay grade of E-1, and a reprimand. R. at 187; Statement of Trial Results. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

[1] Unless otherwise noted, all references to the UCMJ are to the version included in the *Manual for Courts-Martial, United States* (*MCM*) (2019 ed.).

The record of trial consists of 7 prosecution exhibits, 22 defense exhibits, and 6 appellate exhibits. The transcript is 187 pages. SrA Blair is not confined.

Through no fault of SrA Blair, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SrA Blair was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

Undersigned counsel also provides the following information: undersigned counsel currently represents 26 clients and is presently assigned 14 cases pending initial brief before this Court. Seven cases currently have priority over the present case:

1. *United States v. Rocha*, No. ACM 40134 (rem) – The appellant's case was remanded to this Court by the CAAF. Undersigned counsel received the Appellee's brief at approximately 2140 hours yesterday, 9 September 2024. Appellant's brief is due next Monday, 16 September 2024.
2. *United States v. Cole*, No. ACM 40189 (rem) – The appellant's case was remanded to this Court by the CAAF to reassess the sentence or to order a rehearing on the sentence. The appellant's brief is currently due on 25 September 2024.
3. *United States v. George*, USCA Dkt. No. 24-0206/AF, No. ACM 40397 – The United States Court of Appeals for the Armed Forces granted review and has ordered briefing on one issue. The appellant's grant brief and the joint appendix are due on 3 October 2024.

4. *United States v. Casillas*, No. ACM 40551 – The record of trial consists of 19 prosecution exhibits, 4 defense exhibits, and 65 appellate exhibits. The transcript is 1627 pages. The appellant is confined. His case was docketed before this Court on 14 December 2023. Undersigned counsel has begun identifying potential issues and now anticipates beginning her full review in October 2024.
5. *United States v. Dawson*, No. ACM 24041 – The record of trial consists of 13 prosecution exhibits, 9 defense exhibits, 1 court exhibit, and 41 appellate exhibits. The transcript is 761 pages. The appellant is not confined. Undersigned counsel has prioritized this case above others because it was docketed before this Court on 4 October 2023. This Court and undersigned counsel received the verbatim transcript on 9 August 2024.
6. *United States v. Hagen*, No. ACM 40561 – The record of trial consists of 8 prosecution exhibits, 8 defense exhibits, and 48 appellate exhibits. The transcript is 817 pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined. His case was docketed before this Court on 26 January 2024.
7. *United States v. Valadez*, No. ACM 40553 – The record of trial consists of four volumes, six appellate exhibits, two prosecution exhibits, five defense exhibits, and two court exhibits. The transcript is 151 pages. The appellant is confined. His case was docketed before this Court on 6 February 2024.

Since requesting SrA Blair's second enlargement of time, undersigned counsel completed her review of the record and filed a brief before this Court yesterday in *United States v. Benoit Jr.*, No. ACM 40508. She also filed a petition and supplemental brief before the United States Court of Appeals for the Armed Forces in *United States v. Gubicza*, USCA Dkt. No. 24-0219/AF,

No. ACM 40464. She also was on leave outside of the Continental United States on 11-16 August 2024.

During the requested enlargement of time, undersigned counsel will be (1) attending a Joint Appellate Advocacy Training at Fort Belvoir, Virginia, on 26-27 September 2024; (2) preparing for and participating as a moot judge in at least five moot arguments; and (3) on preauthorized leave outside of the local area (over Indigenous Peoples' Day weekend) on 9-14 October 2024.

WHEREFORE, SrA Blair respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Email: samantha.golseth@us.af.mil

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 September 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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12 September 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) CHRISTIAN M. BLAIR, USAF, *Appellant.*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM S32778 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.

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 12 September 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** United States Air Force,	)	No. ACM S32778
Appellant.	)	8 October 2024

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, Senior Airman (SrA) Christian M. Blair, Appellant, hereby moves for a fourth enlargement of time to file his assignments of error. SrA Blair requests an enlargement for a period of 30 days, which will end on **18 November 2024**. The record of trial was docketed with this Court on 22 April 2024. From the date of docketing to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed.

On 30 October 2023, SrA Blair was convicted at a special court-martial before a military judge alone, consistent with his plea, of one charge and specification of drunken operation of a vehicle in violation of Article 113, Uniform Code of Military Justice (UCMJ),[1] 10 U.S.C. § 913. R. at 64; Entry of Judgment. The military judge sentenced him to 90 days' confinement, a bad-conduct discharge, reduction to the pay grade of E-1, and a reprimand. R. at 187; Statement of Trial Results. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

[1] Unless otherwise noted, all references to the UCMJ are to the version included in the *Manual for Courts-Martial, United States* (*MCM*) (2019 ed.).

The record of trial consists of 7 prosecution exhibits, 22 defense exhibits, and 6 appellate exhibits. The transcript is 187 pages. SrA Blair is not confined.

Through no fault of SrA Blair, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SrA Blair was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

Undersigned counsel also provides the following information: undersigned counsel currently represents 26 clients and is presently assigned 13 cases pending initial brief before this Court. Seven cases currently have priority over the present case:

1. *United States v. Benoit, Jr.*, No. ACM 40508 – The Government's answer brief is due tomorrow, 9 October 2024. Undersigned counsel will be on leave outside the local area from 9-14 October 2024. Undersigned counsel will request a brief enlargement of time to allow her to reply on behalf of the appellant when she returns from leave.
2. *United States v. Cole*, No. ACM 40189 (rem) – The Government's answer brief is due on 24 October 2024. Undersigned counsel will evaluate whether to file a reply brief after reviewing the Government's answer brief.
3. *United States v. Casillas*, No. ACM 40551 – The record of trial consists of 19 prosecution exhibits, 4 defense exhibits, and 65 appellate exhibits. The transcript is 1627 pages. The appellant is confined. His case was docketed before this Court on 14

December 2023. Undersigned counsel has begun identifying potential issues and now anticipates beginning her full review in between and after the above listed priorities.

4. *United States v. George, Jr.*, USCA Dkt. No. 24-0206/AF, No. ACM 40397 – The Government's answer brief is due to the U.S. Court of Appeals for the Armed Forces (CAAF) on 7 November 2024. Once filed, undersigned counsel must prioritize the appellant's reply brief.
5. *United States v. Dawson*, No. ACM 24041 – The record of trial consists of 13 prosecution exhibits, 9 defense exhibits, 1 court exhibit, and 41 appellate exhibits. The transcript is 761 pages. The appellant is not confined. Undersigned counsel has prioritized this case above others because it was docketed before this Court on 4 October 2023. This Court and undersigned counsel received the verbatim transcript on 9 August 2024.
6. *United States v. Hagen*, No. ACM 40561 – The record of trial consists of 8 prosecution exhibits, 8 defense exhibits, and 48 appellate exhibits. The transcript is 817 pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined. His case was docketed before this Court on 26 January 2024.
7. *United States v. Valadez*, No. ACM 40553 – The record of trial consists of four volumes, six appellate exhibits, two prosecution exhibits, five defense exhibits, and two court exhibits. The transcript is 151 pages. The appellant is confined. His case was docketed before this Court on 6 February 2024.

Since requesting SrA Blair's third enlargement of time, undersigned counsel completed a grant brief at the CAAF in *United States v. George*, USCA Dkt. No. 24-0206/AF, No. ACM 40397; and briefs before this Court in *United States v. Rocha*, No. ACM 40134 (rem), and *United*

States v. Cole, No. ACM 40189 (rem). So far, during the third enlargement of time, undersigned counsel also attended a Joint Appellate Advocacy Training at Fort Belvoir, Virginia, on 26-27 September 2024; and prepared for and participated as a moot judge in three moot arguments. During the remainder of the current enlargement of time, undersigned counsel will be on preauthorized leave outside of the local area (over Indigenous Peoples' Day weekend) on 9-14 October 2024.

WHEREFORE, SrA Blair respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

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 8 October 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

10 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) CHRISTIAN M. BLAIR, USAF, *Appellant.*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM S32778 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.

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 October 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** United States Air Force, *Appellant.*	)	No. ACM S32778
	)	7 November 2024

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, Senior Airman (SrA) Christian M. Blair, Appellant, hereby moves for a fifth enlargement of time to file his assignments of error. SrA Blair requests an enlargement for a period of 30 days, which will end on **18 December 2024**. The record of trial was docketed with this Court on 22 April 2024. From the date of docketing to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 30 October 2023, SrA Blair was convicted at a special court-martial before a military judge alone, consistent with his plea, of one charge and specification of drunken operation of a vehicle in violation of Article 113, Uniform Code of Military Justice (UCMJ),[1] 10 U.S.C. § 913. R. at 64; Entry of Judgment. The military judge sentenced him to 90 days' confinement, a bad-conduct discharge, reduction to the pay grade of E-1, and a reprimand. R. at 187; Statement of Trial Results. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

[1] Unless otherwise noted, all references to the UCMJ are to the version included in the *Manual for Courts-Martial, United States* (*MCM*) (2019 ed.).

The record of trial consists of 7 prosecution exhibits, 22 defense exhibits, and 6 appellate exhibits. The transcript is 187 pages. SrA Blair is not confined.

Through no fault of SrA Blair, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SrA Blair was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

Undersigned counsel also provides the following information: undersigned counsel currently represents 26 clients and is presently assigned 13 cases pending initial brief before this Court. Five cases currently have priority over the present case:

1. *United States v. Casillas*, No. ACM 40551 – The record of trial consists of 19 prosecution exhibits, 4 defense exhibits, and 65 appellate exhibits. The transcript is 1627 pages. The appellant is confined. His case was docketed before this Court on 14 December 2023. Undersigned counsel has begun identifying potential issues.
2. *United States v. George, Jr.*, USCA Dkt. No. 24-0206/AF, No. ACM 40397 – The Government's answer brief is due on 14 November 2024 (extended from 7 November 2024 due to a request by the Government). Once filed, undersigned counsel must prioritize the appellant's reply brief which is expected to be due on 24 November 2024. Following the submission of appellant's reply brief, undersigned counsel will need to prepare for oral argument which is scheduled at the U.S. Court of Appeals for the Armed Forces (CAAF) on 10 December 2024.

3. *United States v. Dawson*, No. ACM 24041 – The record of trial consists of 13 prosecution exhibits, 9 defense exhibits, 1 court exhibit, and 41 appellate exhibits. The transcript is 761 pages. The appellant is not confined. Undersigned counsel has prioritized this case above others because it was docketed before this Court on 4 October 2023. This Court and undersigned counsel received the verbatim transcript on 9 August 2024.
4. *United States v. Hagen*, No. ACM 40561 – The record of trial consists of 8 prosecution exhibits, 8 defense exhibits, and 48 appellate exhibits. The transcript is 817 pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined. His case was docketed before this Court on 26 January 2024.
5. *United States v. Valadez*, No. ACM 40553 – The record of trial consists of four volumes, six appellate exhibits, two prosecution exhibits, five defense exhibits, and two court exhibits. The transcript is 151 pages. The appellant is confined. His case was docketed before this Court on 6 February 2024. Undersigned counsel has filed a motion for withdrawal as appellate defense counsel because substitute appellate defense counsel has made an appearance. The motion to withdraw is pending before this Court.

In addition to the above-listed priorities, undersigned counsel anticipates filing CAAF petitions and supplements in three cases: *United States v. Manzano-Tarin*, No. ACM S32734 (f rev); *United States v. Johnson*, No. ACM 40291 (f rev); and *United States v. Matthew*, No. ACM 39796 (reh).

Since requesting SrA Blair's fourth enlargement of time, undersigned counsel completed a brief in *United States v. Benoit, Jr.*, No. ACM 40508, and substantive motion opposition in *In*

re Alton, Misc. Dkt. No. 2024-12. Undersigned counsel was also on leave from 9-14 and 30 October 2024. She further prepared for and participated as a moot judge in 4 moot arguments (equaling 12+ hours), attended 2 arguments, and completed 6 peer reviews (reviewing 14 issues). Lastly, she participated in a half-day in-person appellate training and 3 hours of virtual training.

WHEREFORE, SrA Blair respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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Respectfully submitted,

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13 November 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) CHRISTIAN M. BLAIR, USAF, *Appellant.*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM S32778 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.

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 13 November 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** United States Air Force,	)	No. ACM S32778
Appellant.	)	3 December 2024

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

Senior Airman (SrA) Christian M. Blair, Appellant, hereby moves for a sixth enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). SrA Blair requests an enlargement for a period of 30 days, which will end on **17 January 2025**. The record of trial was docketed with this Court on 22 April 2024. From the date of docketing to the present date, 225 days have elapsed. On the date requested, 270 days will have elapsed.

On 30 October 2023, SrA Blair was convicted at a special court-martial before a military judge alone, consistent with his plea, of one charge and specification of drunken operation of a vehicle in violation of Article 113, Uniform Code of Military Justice (UCMJ),[1] 10 U.S.C. § 913. R. at 64; Entry of Judgment. The military judge sentenced him to 90 days' confinement, a bad-conduct discharge, reduction to the pay grade of E-1, and a reprimand. R. at 187; Statement of Trial Results. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

The record of trial consists of 7 prosecution exhibits, 22 defense exhibits, and 6 appellate exhibits. The transcript is 187 pages. SrA Blair is not confined.

[1] Unless otherwise noted, all references to the UCMJ are to the version included in the *Manual for Courts-Martial, United States* (*MCM*) (2019 ed.).

Through no fault of SrA Blair, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SrA Blair was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

Undersigned counsel also provides the following information: undersigned counsel currently represents 25 clients and is presently assigned 12 cases pending initial brief before this Court. Four cases currently have priority over the present case:

1. *United States v. George, Jr.*, USCA Dkt. No. 24-0206/AF – The appellant's reply brief for a granted issue was filed at the Court of Appeals for the Armed Forces (CAAF) on Monday, 25 November 2024, just prior to the Thanksgiving holiday. Undersigned counsel is preparing for oral argument on 10 December 2024 (undersigned counsel has completed two moot arguments and is preparing for an upcoming third moot argument).
2. *United States v. Casillas*, No. ACM 40551 – The record of trial consists of 19 prosecution exhibits, 4 defense exhibits, and 65 appellate exhibits. The transcript is 1627 pages. The appellant is confined. His case was docketed before this Court on 14 December 2023. Undersigned counsel has begun identifying potential issues.
3. *United States v. Dawson*, No. ACM 24041 – The record of trial consists of 13 prosecution exhibits, 9 defense exhibits, 1 court exhibit, and 41 appellate exhibits. The transcript is 761 pages. The appellant is not confined. Undersigned counsel has prioritized this case above others because it was docketed before this Court on

4 October 2023. This Court and undersigned counsel received the verbatim transcript on 9 August 2024.

4. *United States v. Hagen*, No. ACM 40561 – The record of trial consists of 8 prosecution exhibits, 8 defense exhibits, and 48 appellate exhibits. The transcript is 817 pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined. His case was docketed before this Court on 26 January 2024.

In addition to the above-listed priorities, undersigned counsel anticipates filing a CAAF supplement in *United States v. Manzano-Tarin*, No. ACM S32734 (f rev) by 12 December 2024.

Since requesting SrA Blair's fifth enlargement of time, in addition to making progress on undersigned counsel's review of *United States v. Casillas*, No. ACM 40551, undersigned counsel completed a reply brief in *United States v. George, Jr.*, USCA Dkt. No. 24-0206/AF. This reply brief included researching for and writing an in-depth discussion of precedent discussing grammatical construction and more. As a result, undersigned counsel spent at least 80 hours researching, drafting, and editing this brief. Given the complex discussion, undersigned counsel's preparation for oral argument has also been extremely time intensive. Further, undersigned counsel had to prioritize editing the appellant's motion for reconsideration in *United States v. Matthew*, No. ACM 39796 (reh), which was filed on 28 November 2024, given the definite timeline required for filing this motion. Undersigned counsel also provided three peer reviews and prepared for and acted as a moot judge on two occasions to assist her colleagues with their preparation. Moreover, during this enlargement, undersigned counsel has needed to attend to personal matters related to her mother's health and current hospitalization.

WHEREFORE, SrA Blair respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
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CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
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5 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) CHRISTIAN M. BLAIR, USAF, *Appellant.*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM S32778 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.

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 December 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** United States Air Force, *Appellant.*	)	No. ACM S32778
	)	23 December 2024

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

Assignments of Error

I.

WHETHER TRIAL COUNSEL IMPROPERLY ARGUED THAT SENIOR AIRMAN BLAIR'S SENTENCE SHOULD PARALLEL THE IMPACT ON SG.

II.

WHETHER SENIOR AIRMAN BLAIR'S SENTENCE IS INAPPROPRIATELY SEVERE.[1]

III.

WHETHER THE RECORD OF TRIAL'S NUMEROUS OMISSIONS WARRANT RELIEF OR, AT A MINIMUM, REMAND FOR CORRECTION.

IV.

WHETHER SENIOR AIRMAN BLAIR IS ENTITLED TO SENTENCE RELIEF BECAUSE OF THE 175-DAY DELAY BETWEEN ANNOUNCEMENT OF SENTENCE AND DOCKETING WITH THIS COURT.

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[1] Senior Airman Blair personally supplements this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Statement of the Case

On 30 October 2023, a military judge sitting as a special court-martial convicted Senior Airman (SrA) Christian Blair, consistent with his plea, of one specification of drunken operation of a vehicle in violation of Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913.[2] (R. at 64; EOJ.) The military judge sentenced SrA Blair to 90 days' confinement, a bad-conduct discharge, reduction to the grade of E-1, and a reprimand. (R. at 187.) The convening authority took no action on the findings or sentence.[3] (Convening Authority Decision on Action.)

Statement of Facts

SrA Blair grew up in Tennessee with loving parents and a fulfilling childhood. (Def. Ex. T at 1.) On the first day of high school, his father died suddenly and tragically in a motorcycle accident. (*Id.*) This fell heavy on SrA Blair, thrusting him into an older role at a young age and driving him to become more independent and

[2] Unless otherwise noted, all references to the UCMJ are to the version included in the *Manual for Courts-Martial, United States* (*MCM*) (2019 ed.).

[3] Defense counsel's submission of matters to the convening authority on SrA Blair's behalf incorrectly stated that the convening authority could disapprove findings and any part of the sentence. (Request for Clemency, dated 5 Nov. 2023.) This error appeared in the "law" section, where the defense counsel stated this case does not involve a bad-conduct discharge, which it plainly does. This seems like boilerplate or leftover from another case. SrA Blair does not claim ineffective assistance or assign an error on this basis. The actual request was for relief the convening authority could provide—suspension of forfeitures and disapproval of the reprimand. SrA Blair notes, however, that the convening authority stated that he considered the victim submissions when there were none. It seems defense counsel is not the only one who is recycling documents.

capable. (*Id.*) He joined the Air Force out of high school and became a radio frequency technician. (*Id.*) He received his first assignment to Germany and performed well, achieving Senior Airman Below the Zone. (*Id.* at 2.) Of note, he received recognition from First Sergeants for, among other things, helping talk a friend and fellow Airman out of taking their own life. (*Id.*)

On 22 October 2022, SrA Blair attended a party near base, where he consumed two White Claw hard seltzers and a large cup of "jungle juice," a mixture of fruit punch and multiple alcohols. (R. at 22–23.) He did not know how much alcohol was in the "jungle juice." (*Id.*) He left the party at approximately 0200 the next morning, driving home at 130 kilometers per hour on the autobahn, which has no speed limit. (R. at 23; Pros. Ex. 1 at 2.) It was foggy and dark. (Pros. Ex. 1 at 2.) SrA Blair's vehicle collided with the rear end of a vehicle driven by AG, a German national. (*Id.*) This caused AG to lose control and both vehicles to strike guardrails. (*Id.*) AG had a passenger, SG, who was asleep and lying down in the back seat and suffered severe injuries. (*Id.*; Def. Ex. U.) SrA Blair helped AG exit the badly damaged car, and emergency personnel came to treat SG. (Def. Ex. T; Pros. Ex. 1 at 2–3.) German police handed SrA Blair over to security forces, who gave him a breathalyzer at 0614 that yielded a concentration of 0.096 grams of alcohol per 210 liters of breath. (Pros. Ex. 1 at 3; R. at 24.)

SrA Blair pleaded guilty at a special court-martial. Both SG and AG provided unsworn statements where they documented the impact on their lives. (Court Exs. A, B.) A stipulation of expected testimony established the extensive therapy and

treatment SG underwent. (R. at 83–84.) SG's treating physician stated that, as of about seven months before the court-martial, SG was able to walk freely and her hand strength and grip had improved. (*Id.*)

ARGUMENT

I.

TRIAL COUNSEL IMPROPERLY ARGUED THAT SENIOR AIRMAN BLAIR'S SENTENCE SHOULD PARALLEL THE IMPACT ON SG.

Additional Facts

During sentencing argument, trial counsel argued as follows:

> Through the plea deal, the cap is 6 months, and the government is asking for the 6-month cap. A sentence of 6 months is not even half the time that [SG] is in need of therapy for the injuries she may suffer for the rest of her life.
>
> For Airman Blair to serve anything less than 6 months of confinement, when [SG] has been in need of therapy for over a year is an insult to the injuries, trauma, anxiety, inconvenience, and so much more that he has caused her.
>
> Your Honor, 6-months pales in comparison to the therapy she has endured and may endure for the rest of her life. As far as a bad conduct discharge, we all know that a bad conduct discharge is punitive, and the effect of this discharge characterization will remain with Airman Blair for the rest of his life. And that is the intention of the request, Your Honor. The damages he's caused will likely remain with her.

(R. at 175.) The military judge corrected trial counsel to the degree she relied on the contents of unsworn statements to make these arguments since unsworn statements are not evidence. (R. at 175–76.) Defense counsel did not object to this argument.

Standard of Review

Whether argument is improper is a question of law, reviewed de novo. *United States v. Andrews*, 77 M.J. 393, 398 (C.A.A.F. 2018). If defense counsel does not object, this Court reviews for plain error. *Id.* "Plain error occurs when (1) there is error, (2) the error is plain or obvious, and (3) the error results in material prejudice to a substantial right of the accused." *Id.* at 401 (quoting *United States v. Fletcher*, 62 M.J. 175, 179 (C.A.A.F. 2005)).

Law and Analysis

Improper argument, a facet of prosecutorial misconduct, "occurs when trial counsel oversteps the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense." *United States v. Sewell*, 76 M.J. 14, 18 (C.A.A.F. 2017) (internal quotation marks, citation, and alterations omitted). Improper argument will yield relief only if the misconduct "actually impacted on a substantial right of an accused (*i.e.*, resulted in prejudice)." *Fletcher,* 62 M.J. at 178 (quoting *United States v. Meek*, 44 M.J. 1, 5 (C.A.A.F. 1996)).

Trial counsel explicitly asked the military judge to issue a sentence because of the time SG spent in therapy. Not only that, but she argued that the lifetime of *potential* impact on SG served as a basis to issue a bad-conduct discharge. While victim impact is a valid consideration for sentencing, Article 56(c)(1)(B)(i), UCMJ, 10 U.S.C. § 856(c)(1)(B)(i), it is invalid to create a mathematical relationship between the time SG needed therapy and the time SrA Blair should spend in confinement. Nor is the speculative nature of what this impact might be on the remainder of SG's

life a valid basis to consider imposing a lifetime stigma of the bad-conduct discharge. This was plain and obvious error.

The Court of Appeals for the Armed Forces (CAAF) outlined a balancing approach of three factors for assessing prosecutorial misconduct's prejudicial effect: "(1) the severity of the misconduct, (2) the measures adopted to cure the misconduct, and (3) the weight of the evidence supporting the conviction." *Id.* at 184. When applying *Fletcher* to improper sentencing argument, this Court considers whether "trial counsel's comments, taken as a whole, were so damaging that we cannot be confident that the appellant was sentenced on the basis of the evidence alone." *United States v. Halpin*, 71 M.J. 477, 480 (C.A.A.F. 2013) (citations, alterations, and internal quotation marks omitted). The military judge's admonishment to trial counsel focused on the source of the argument—relying on matters from the unsworn statement—and did not address the direct point here that trial counsel was attempting to argue a causal relationship between impact and sentence. The military judge could have, but did not, address that part of the erroneous argument. The severe sanction that the military judge issued, a bad-conduct discharge, demonstrates the impact of the error. Thus, despite a presumption that the military judge knows the law, this Court cannot be certain the military judge rested SrA Blair's sentence on the basis of the evidence alone.

WHEREFORE, SrA Blair respectfully requests this Honorable Court reassess his sentence.

II.

SENIOR AIRMAN BLAIR'S SENTENCE IS INAPPROPRIATELY SEVERE.

Additional Facts

SrA Blair expressed deep remorse and shame for his actions in his verbal and written unsworn statements. (R. at 159–60; Def. Ex. T.) He also presented an extensive sentencing case. In addition to the plaudits mentioned in the facts above, SrA Blair had the support of numerous peers and superiors. Two senior noncommissioned officers (SNCOs) testified on his behalf, expressing their appreciation for his dedication to the Air Force and their willingness to serve with him again, despite his missteps. (R. 139–49.) SrA Blair was among the top Airmen that one of the SNCOs had ever supervised. (R. at 141.) Twelve character letters from superiors, peers, and family reveal a depth of character and a consistent devotion to the Air Force. (Def. Exs. B–M.)

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

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." Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). 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." *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (citations omitted). "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]." *United States v. Hutchison*, 57 M.J. 231, 233 (C.A.A.F. 2002) (citations omitted). 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. *See United States v. Boone*, 49 M.J. 187, 192 (C.A.A.F. 1998).

SrA Blair's sentence to a bad-conduct discharge is inappropriately severe. An individualized evaluation of this Airman and the punishment shows it does not fit. First, victim impact does not require a bad-conduct discharge. SrA Blair understands that the offense was significant and caused repercussions for AG and SG. While all cases of driving under the influence cases are serious, the degree of injuries in the case was the centerpiece of the Government's sentencing case. However, the stipulation of expected testimony established that SG, who suffered severe injuries likely magnified by the fact she was asleep and lying down when the impact occurred, made significant progress and was continuing to regain functions over time. This matters, in part because it undercuts a primary argument the Government leveled to support the bad-conduct discharge: the lifetime impact on SG.

Second, SrA Blair presented a potent sentencing case. He understood he would face confinement, but he asked the military judge not to adjudge a bad-conduct discharge. This was because of his commitment to and passion for the Air Force. Not

only did he show personal dedication, but the character letters and testimony revealed that others were willing to serve with SrA Blair, despite his struggles. In a sense, trial counsel was correct in her sentencing argument: the bad-conduct discharge will follow SrA Blair for life. But in *his* case, this was inappropriate. Rarely does a young Airman accumulate such a strong record over a short period. He deserved what few do—a chance to serve despite misconduct. The three months' confinement for the offense was sufficient. In sum, taking into account the nature of the offense and the offender, the bad-conduct discharge is inappropriately severe.

WHERFORE, SrA Blair respectfully requests this Honorable Court disapprove his bad-conduct discharge.

III.

THE RECORD OF TRIAL'S NUMEROUS OMISSIONS WARRANT RELIEF OR, AT A MINIMUM, REMAND FOR CORRECTION.

Additional Facts

The court-martial audio is not present in the record of trial, nor are Defense Exhibits U and V. Additionally, the preliminary hearing audio does not function.

Standard of Review

Whether a record of trial is incomplete or not substantially verbatim is reviewed de novo. *United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law and Analysis

The record of trial is "the very heart of the criminal proceedings and the single essential element to [] meaningful appellate review." *United States v. Credit*, 4 M.J.

118, 119 (C.M.A. 1977). A complete record of proceedings is required for every court-martial in which the sentence adjudged includes "a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months." Article 54(c)(2), 10 U.S.C. § 854(c)(2). A complete record shall include "[a] substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting" and "[e]xhibits." R.C.M. 1112(b)(1), (b)(6). A substantial omission in a record of trial raises a presumption of prejudice to an appellant, which the Government must rebut. *Henry*, 53 M.J. at 111 (citations omitted). "Moreover, since in military criminal law administration the Government bears responsibility for preparing the record of trial, it is fitting that every inference be drawn against the Government with respect to the existence of prejudice because of an omission." *United States v. McCullah*, 11 M.J. 234, 237 (C.M.A. 1981) (citation omitted).

The missing audio is a substantial omission. *United States v. Matthew*, No. ACM 39796 (f rev), 2022 CCA LEXIS 425, at *11–12 (A.F. Ct. Crim. App. 21 Jul. 2022) (unpublished). In *Matthew*, this Court held the omission of audio of the arraignment was quantitatively substantial. *Id.* Interpreting the 2016 *MCM*, this Court followed the procedures in R.C.M. 1103 and remanded to the Judge Advocate General. *Id*. at *15–16. Here, like *Matthew*, omitting the audio is substantial. While the transcript does exist in this case (and did not in *Matthew*), the transcript is not part of the record of trial; instead, it is one of the attachments for appellate review under R.C.M. 1112(f). The record of trial is incomplete, both due to the audio issues and the

missing Defense exhibits. *See Matthew*, 2022 CCA LEXIS 425, at * 11; *United States v. Valentin-Andino*, 83 M.J. 537, 540–41 (A.F. Ct. Crim. App. 2023) (remanding for correction because of substantially verbatim recordings missing from record).

This Court should use its broad remit under Article 66, UCMJ, to provide any sentence relief appropriate for the Government's failure to provide a record of trial within the meaning of R.C.M. 1112. The Government's chronic failure to docket complete records of trial shows no signs of abating. As this Court has recognized, this is institutional neglect. *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. 7 Jun. 2024) (finding institutional neglect in Air Force post-trial processing).

If this Court disagrees that sentencing relief is warranted, a remand is required to locate the audio and exhibits, and to fix the preliminary hearing audio. The absence of the audio impedes appellate review for SrA Blair and this Court. This is especially true here where the Government introduced SG's voice before trial (Pros. Ex. 5), presumably to compare to her voice at trial which we cannot hear.

WHEREFORE, SrA Blair respectfully requests this Honorable Court provide sentencing relief or remand to correct the record.

IV.

SENIOR AIRMAN BLAIR IS ENTITLED TO SENTENCE RELIEF BECAUSE OF THE 175-DAY DELAY BETWEEN ANNOUNCEMENT OF SENTENCE AND DOCKETING WITH THIS COURT.

Additional Facts

SrA Blair's court-martial concluded on 30 October 2023. (R. at 187.) The Court reporter started transcription on 16 November 2023. (Court Reporter's Chronology, dated 19 January 2024.) She completed the transcript and sent it to trial counsel for review on 26 December 2023. (*Id.*) She submitted the complete transcript on 19 January 2024, eighty-one days after the sentence. (*Id.*) This Court docketed the case on 22 April 2024, 175 days after the sentence. There is no explanation in the record for what happened in the ninety-four days between transcript completion and docketing.

Standard of Review

Whether an appellant has been deprived of his due process right to speedy appellate review is a question of law reviewed de novo. *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006).

Law and Analysis

SrA Blair is entitled to sentence relief from this Court because of the Government's dilatory processing violated *Moreno*. Even if this Court were to find no

prejudice from the due process violation, he is nevertheless entitled to relief under *Gay*, *Toohey*, and *Tardif*.[4]

Convicted servicemembers have a due process right to timely review of courts-martial convictions. *Moreno*, 63 M.J. at 135. Presumptive prejudicial delay occurs in three scenarios: (1) the action of the convening authority is not taken within 120 days of the completion of trial; (2) the record of trial is not docketed by the service Court of Criminal Appeals (CCAs) within 30 days of the convening authority's action; or (3) appellate review is not completed and a decision is not rendered by a CCA 18 months after docketing. 63 M.J. at 142. This Court also adapted *Moreno*'s benchmark standards for the new post-trial processing scheme. *See United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (applying the aggregate *Moreno* standard of 150 days from the day an appellant was sentenced to the docketing of the case with the CCA to determine presumptively unreasonable delay).

The initial inquiry starts with the presumption of unreasonable post-trial delay. The 175-day delay between the 30 October 2023 announcement of sentence and the 22 April 2024 docketing with this Court amply exceeds the 150-day limit from *Livak*.

A presumption of unreasonable post-trial delay triggers a four-part analysis. *Moreno*, 63 M.J. at 135 (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). It includes:

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[4] *United States v. Gay*, 74 M.J. 736 (A.F. Ct. Crim. App. 2015), *aff'd*, 75 M.J. 264 (C.A.A.F. 2016); *United States v. Toohey*, 63 M.J. 353 (C.A.A.F. 2006); *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002).

(1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice. *Id*. Prejudice considers "(1) prevention of oppressive incarceration pending appeal; (2) minimization of anxiety and concern of those convicted awaiting the outcome of their appeals; and (3) limitation of the possibility that a convicted person's grounds for appeal, and his or her defenses in case of reversal and retrial, might be impaired." *Id*. at 138–39 (citations omitted). The CAAF "expect[s]" the service courts to "document the reasons for delay" and "exercise [] institutional vigilance." *Id*. at 143. Once a presumptive delay or facially unreasonable delay triggers the analysis, the factors are balanced with no single factor being required and none being dispositive. *Id*. at 136 (citations omitted).

The total length of delay and the reasons for the delay weigh in favor of SrA Blair. This was a relatively straightforward guilty-plea case that took 175 days to docket. The court reporter taking eighty-one days to complete the transcript is slow, but is not the primary reason the delay weighs in SrA Blair's favor. The reasons for delay overwhelmingly favor SrA Blair because we have *no* explanation for the cause. It took ninety-four days to go from completed transcript to docketing with this Court with exactly zero explanation. And, as Assignment of Error III shows, the record is not even complete.[5] Additionally, SrA Blair asserted his right to a timely

[5] SrA Blair maintains that the docketing of an incomplete record of trial does not serve to toll the clock for the purpose of the *Moreno* and *Livak* analysis. Thus, the true count should continue to run until the Government dockets a complete record. SrA Blair recognizes this Court has repeatedly ruled against this position. *See*, *e.g.*, *United States v. Donley*, No. ACM 40350 (f rev), 2024 CCA LEXIS 228, at *37–38

appeal on 9 August 2024 in a motion for enlargement of time, and renews that demand here.

Additionally, this case presents more cause for relief than another recent case from this Court with a similar timeline, *United States v. Atencio*, No. ACM S32738, 2024 CCA LEXIS 543 (A.F. Ct. Crim. App. 20 Dec. 2024). In *Atencio*, which had a 166-day delay on a similarly short transcript, this Court found "some evidence of a lack of urgency or indifference" in post-trial processing, and this Court at least had evidence of what happened after transcription. *Id.* at *10–11. Here, there is none.

Even if this Court finds no prejudice, SrA Blair is still entitled to post-trial relief. *See Tardif*, 57 M.J. at 225; *Gay*, 74 M.J. at 744. The factors for *Tardif* relief include:

> (1) How long did the delay exceed the standards set forth in [*Moreno*]? (2) What reasons, if any, has the [G]overnment set forth for the delay? Is there any evidence of bad faith or gross indifference to the overall post-trial processing of this case? (3) Keeping in mind that our goal under *Tardif* is not to analyze for prejudice, is there nonetheless some evidence of harm (either to the appellant or institutionally) caused by the delay? (4) Has the delay lessened the disciplinary effect of any particular aspect of the sentence, and is relief consistent with the dual goals of justice and good order and discipline? (5) Is there any evidence of institutional neglect concerning timely post-trial processing, either across the service or at a particular installation? (6) Given the passage of time, can this court provide meaningful relief in this particular situation?

Gay, 74 M.J. at 744. These factors also favor SrA Blair. First, the 175 days exceeded the 150 days authorized from the announcement of sentence to docketing a complete record of trial. Second, there is no discernable reason why the Government could not

(A.F. Ct. Crim. App. 11 Jun. 2024). SrA Blair preserves his position but nonetheless provides the argument based on the 175-day docketing of *a* record.

make the deadline here. As articulated above, the majority of the delay has no explanation at all. Next, providing sentencing relief will have no negative impact on good order and discipline and will not lessen the disciplinary effect of the sentence. He served his confinement long ago.

On the issue of institutional neglect, this Court is well aware of the trend of untimely docketing and incomplete records of trial. Formerly, appellate counsel would cite the list of cases involving remand for correction of the record, but the footnote is becoming unwieldy. Suffice to say this Court has recognized institutional neglect. *United States v. Valentin-Andino*, 2024 CCA LEXIS 223, at *17. This untimely and unexplained slow docketing of the record fits within the broader pattern of institutional neglect. Providing SrA Blair relief will provide the Government further incentive to correctly prepare and docket a record of trial within 150 days of announcement of sentence.

WHEREFORE, SrA Blair respectfully requests this Honorable Court grant sentencing relief by disapproving his bad-conduct discharge.

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

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 matter, which supplements the second assignment of error:

II.

SENIOR AIRMAN BLAIR'S SENTENCE WAS INAPPROPRIATELY SEVERE.

SrA Blair points this Court to three cases (with supporting documents provided in a motion to attach) that further demonstrate his sentence is inappropriately severe. In *United States v. Lenk*, a technical sergeant received a reduction to E-4 and 105 days of confinement for driving drunk and causing injury to a military veteran. (Entry of Judgment, *United States v. Lenk*, dated 5 Dec. 2023.) In *United States v. Goodwin*, a senior airman drove drunk twice and disobeyed an order revoking his driving privileges, and received a total of 45 days' confinement. (Entry of Judgement, *United States v. Goodwin*, dated 7 Jun. 2023.) And in *United States v. Hamlett*, a master sergeant drove drunk and assaulted a police officer; his sentence was 120 days' confinement and reduction to E-6. (Entry of Judgment, *United States v. Hamlett*, dated 21 Mar. 2024.) The common thread in these cases is the absence of a punitive discharge. "In making a sentence appropriateness determination, [CCAs] are required to examine sentences in closely related cases and permitted, but not required, to do so in other cases." *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (citations omitted). This Court should consider SrA Blair's

sentence in light of sentences issued in comparable cases and disapprove the bad-conduct discharge.

WHEREFORE, SrA Blair requests this Honorable Court disapprove his bad-conduct discharge.

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 23 December 2024.

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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(240) 612-4770

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM S32778**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Christian M. BLAIR	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 23 December 2024, Appellant submitted a motion to attach the entries of judgment from three other courts-martial involving convictions under Article 113, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913. Appellant contends these documents "are relevant and necessary to support his argument" that his sentence is inappropriately severe. The Government opposes the motion "because the materials do not comport" with *United States v. Jessie*, 79 M.J. 437, 442 (C.A.A.F. 2020).

Having considered Appellant's motion, the Appellee's opposition, and the applicable law, we grant the motion to attach. However, we defer consideration of the applicability of *United States v. Jessie* and related case law to the attachments until we complete our Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's entire case.

Accordingly, it is by the court on this 31st day of December, 2024,

ORDERED:

Appellant's Motion to Attach dated 23 December 2024 is **GRANTED**.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Acting Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR TO ATTACH**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** United States Air Force, *Appellant.*	)	No. ACM S32778
	)	23 December 2024

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

Pursuant to Rule 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Appellant, Senior Airman (SrA) Christian M. Blair, hereby moves to attach the following documents to the record:

1. Entry of Judgment for *United States v. Technical Sergeant John Link*, 5 December 2023 (3 pages)

2. Entry of Judgment for *United States v. Senior Airman Legend Goodwin*, 7 Jun. 2023 (3 pages)

3. Entry of Judgment for *United States v. Master Sergeant Markus Hamlett*, 21 Mar. 2024 (4 pages)

Each of these documents reflects the court-martial disposition for cases involving Article 113, UCMJ, 10 U.S.C. § 913, offenses. The authenticity of these documents is readily apparent. SrA Blair moves to attach these documents in support of his submission under *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). These documents are relevant and necessary to support his argument and for this Court to compare sentences. In *United States v. Jessie*, 79 M.J. 437, 445, (C.A.A.F. 2020), the Court of Appeals for the Armed Forces continued the practice of allowing

consideration of matters outside the record to resolve issues reasonably raised by materials in the record but not fully resolvable by those materials. Nothing in *Jessie* disturbed a Court of Criminal Appeals' power to engage in sentence comparison, and supplementation outside the record is often indispensable to sentence comparison.

WHEREFORE, SrA Blair respectfully requests this Honorable Court grant this motion.

Respectfully Submitted,

[redacted]

MATTHEW L. BLYTH, Maj, USAFR
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matthew.blyth.1@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' OPPOSITION TO APPELLANT'S MOTION TO ATTACH**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** United States Air Force *Appellant.*	)	No. ACM S32778
	)	30 December 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 enters its general opposition to Appellant's motion to attach, because the materials do not comport with United States v. Jessie, 79 M.J. 437, 442 (C.A.A.F. 2020). Because it is this Court's general practice to grant motions to attach and defer analysis under Jessie until it writes its opinion, the United States will argue more specifically in its answer brief why this Court should not consider the attachments under Jessie.

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 30 December 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR WITHDRAWAL OF APPELLATE DEFENSE COUNSEL**
v.	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** United States Air Force, *Appellant.*	)	No. ACM S32778
	)	31 December 2024

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

Undersigned counsel, Major (Maj) Samantha Golseth, moves to withdraw her appearance as appellate defense counsel in the above-captioned case. JT. CT. CRIM. APP. R. 12(b), 23; A.F. CT. CRIM. APP. R. 12.4, 23.3(h). Senior Airman (SrA) Christian M. Blair, Appellant, consents to Maj Golseth's withdrawal as appellate defense counsel. Maj Matthew Blyth has been detailed to represent SrA Blair and provided notice of his appearance in the Brief on Behalf of Appellant, filed on 23 December 2024. A thorough turnover of the record between counsel was completed prior to that filing. The reason for Maj Golseth's withdrawal is because Maj Blyth was available to review SrA Blair's record of trial sooner than Maj Golseth. Maj Blyth has reviewed SrA Blair's case and filed his assignments of error. A copy of this motion will be sent to SrA Blair simultaneous to its filing.

WHEREFORE, undersigned counsel respectfully requests that this Honorable Court grant this motion.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
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1500 West Perimeter Road, Suite 1100
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Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 31 December 2024.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR**
v.	)	Before Panel No. 3
Senior Airman (E-4) **CHRISTIAN M. BLAIR,** USAF, *Appellant.*	)	No. ACM S32778
	)	21 January 2025

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

ASSIGNMENTS OF ERROR

I.

WHETHER TRIAL COUNSEL IMPROPERLY ARGUED THAT [APPELLANT'S] SENTENCE SHOULD PARALLEL THE IMPACT ON S.G.

II.

WHETHER [APPELLANT'S] SENTENCE IS INAPPROPRIATELY SEVERE.

III.

WHETHER THE RECORD OF TRIAL'S NUMEROUS OMISSIONS WARRANT RELIEF OR, ATA MINIMUM, REMAND FOR CORRECTION.

IV.

WHETHER [APPELLANT] IS ENTITLED TO SENTENCE RELIEF BECAUSE OF THE 175-DAY DELAY BETWEEN ANNOUNCEMENT OF SENTENCE AND DOCKETING WITH THIS COURT.

STATEMENT OF CASE

The United States accepts Appellant's statement of the case.

STATEMENT OF FACTS

According to the stipulation of fact (ROT Vol. 1, at 13; Pros. Ex. 1), Appellant was stationed at Ramstein Air Base, Germany. (Id., para. 2.) On or about 23 October 2022, Appellant consumed too much alcohol at a party, became intoxicated beyond the legal limit to drive, drove anyway on a highway with dark and foggy conditions. (Id., paras. 3-5.)

At approximately 0250 hours, he lost control of his car, causing a three-car collision. (Id., para. 6.) Appellant struck, at full speed, the car with victims A.G. and S.G., causing them to hit the outer guard rail and injuring both victims in that car. (Id., para. 4, 7, 11.)

S.G. suffered life-threatening injuries; severe bone fractures to her nasal bones, left rib, sacrum, and cervical spine; and bruises and hematoma to her brain, lung, liver, and kidney. (Id., para. 12.) S.G. was unresponsive on the scene, so the fire department had to extract her from the vehicle and transport her to the hospital. (Id.) She was intubated and sedated, and she underwent emergency surgery to treat the fractured sacrum. (Id.) Because of the life-threatening injuries, S.G. was placed in a coma for several days and remained in neurosurgical intensive care for 13 days. (Id.)

A.G. sustained multiple bruises to her ribs, whiplash, a concussion, a bruised lung, and had breathing problems. (Id., para. 11.) She was transported to the Nardini Klinikum Landstuhl for emergency treatment and admitted to the hospital, where she was held for observation for three days. (Id.)

After law enforcement took Appellant into custody, he failed several tests, all of which indicated he was intoxicated. (Id., paras. 14-18.)

The stipulation of fact included many photographs from Appellant's crime scene, including those of the gray car Appellant destroyed in which victims S.G. and A.G. were riding. (Pros. Ex. 1.)

Additional relevant facts are included for each Issue below.

ARGUMENT

I.

TRIAL COUNSEL'S ARGUMENT THAT THE MILITARY JUDGE SHOULD CONSIDER THE IMPACT ON S.G. WHEN SENTENCING APPELLANT WAS NOT INAPPROPRIATE.

Additional Facts

Trial counsel's sentencing argument covers several pages of trial transcript. (R. at 171-77.) The argument addressed how the victims of Appellant's drunk-driving crime were simply driving home when he caused the accident; the level of fear, trauma, and long-lasting physical injury and financial loss Appellant caused them. (Id.)

As excerpted in Appellant's Assignment of Error (App. Br. at 4), trial counsel stated the following during the sentencing argument:

> Through the plea deal, the cap is 6 months, and the government is asking for the 6-month cap. A sentence of 6 months is not even half the time that [S.G.] is in need of therapy for the injuries she may suffer for the rest of her life.
>
> For [Appellant] to serve anything less than 6 months of confinement, when [S.G.] has been in need of therapy for over a year is an insult to the injuries, trauma, anxiety, inconvenience, and so much more that he has caused her.
>
> Your Honor, six months pales in comparison to the therapy she has endured and may endure for the rest of her life. As far as a bad conduct discharge, we all know that a bad conduct discharge is punitive, and the effect of this discharge characterization will remain with [Appellant] for the rest of his life. And that is the intention of

> the request, Your Honor. The damages he's caused will likely remain with her.

(R. at 175.)

As Appellant notes, trial defense counsel did not object. (App. Br. at 4.) However, the military judge stated on the record that he would not consider the victims' unsworn statements as matters in aggravation under R.C.M. 1001(b)(4). (R. at 175-76.)

Trial defense counsel requested a sentence of a reprimand, reduction in rank, and 180 days of confinement, but no bad conduct discharge. (R. at 177, 179-81.)

The military judge sentenced Appellant to the minimum confinement permitted pursuant to the plea agreement of 90 days (App. Ex. 1), a reprimand, reduction to E-1, and a bad conduct discharge. (R. at 187.)

Standard of Review

This court reviews allegations of prosecutorial misconduct and improper arguments *de novo*. United States v. Voorhees, 79 M.J. 5, 9 (C.A.A.F. 2019). Where defense counsel fails to object, this Court reviews for plain error. United States v. Andrews, 77 M.J. 393, 398 (C.A.A.F. 2018). Plain error occurs when (1) there is error, (2) the error is plain or obvious, and (3) the error results in material prejudice to a substantial right of the accused. Id. at 401 (internal citation omitted).

Law

Argument by trial counsel must be viewed within the context of the entire court-martial, not focused on words in isolation. United States v. Baer, 53 M.J. 235, 238 (C.A.A.F. 2000) (internal citation omitted). "[A] court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations." United

States v. Palacios Cueto, 82 M.J. 323, 333 (C.A.A.F. 2022) (internal citation omitted). Thus, "[a] statement that might appear improper if viewed in isolation may not be improper when viewed in context." Id.

If the Court finds a prosecutor's argument amounted to clear, obvious error, it then determines whether there was a reasonable probability that, but for the error, the outcome of the proceeding would have been different. Voorhees, 79 M.J. at 9 (internal quotation marks and citations omitted). In analyzing prejudice from a prosecutor's improper argument, the Court considers (1) the severity of the misconduct, (2) the measures adopted to cure the misconduct, and (3) the weight of the evidence supporting the conviction. Andrews, 77 M.J. at 402. The lack of a defense objection is some measure of the minimal impact of a prosecutor's improper comment. United States v. Gilley, 56 M.J. 113, 123 (C.A.A.F. 2001).

Analysis

Appellant claims trial counsel's pre-sentencing argument was error, because it "explicitly asked the military judge to issue a sentence because of the time S.G. spent in therapy" and "argued that the lifetime of potential impact on S.G. served as a basis to issue a bad conduct discharge." (App. Br. 5.) His assignment of error is without merit.

Appellant cites no case in which the Court found error in similar pre-sentencing arguments. To the contrary, it was appropriate to argue about the time S.G. spent in therapy. And even though Appellant presented evidence of S.G.'s potential physical rehabilitation from the injuries Appellant caused, there was the possibility of lifelong impacts, so arguing about their potential was reasonable. In United States v. Cancellieri, ARMY 20160525, 2018 CCA LEXIS 75 (Army Ct. Crim. App. 15 February 2018) (unpub. op.), *rev. denied*, 78 M.J. 21 (C.A.A.F. 2018), the Army CCA found trial counsel's argument that the court-martial panel should confine the appellant for

one month longer than he made his victim suffer was no error and, instead, was "reasonable argument." Id. at *8.

Even if this Court were to find trial counsel's argument was clear and obvious error, there is no reasonable probability that, but for the error, Appellant's sentence would have been different. Trial counsel made the argument before a military judge, not a panel of court-martial members. And Appellant's misconduct was serious, resulting in extensive injuries to S.G., so the weight of evidence favored a strict sentence. Nonetheless, the military judge granted Appellant leniency by adjudging a sentence of 90 days of confinement, half of the 180 days that Appellant's own trial defense counsel had requested. Therefore, the military judge was clearly not convinced about following any mathematical equation in determining the sentence.

Although the military judge did not explain the sentence, it appears he intended to give Appellant an extra benefit in the range of confinement, because he found the bad conduct discharge to be an important part of the sentence. In any event, it is clear the military judge was not influenced by any arguable error. And trial defense counsel did not object to the portion of trial counsel's argument with which Appellant now takes issue, demonstrating it was not material.

Because trial counsel's pre-sentencing argument was not error, let clear and obvious error, and Appellant's sentence would not have been different without said arguable error, the Court should reject this assignment of error.

II.

APPELLANT'S SENTENCE WAS NOT INAPPROPRIATELY SEVERE.

Additional Facts

The maximum punishment authorized for Appellant, because he was sentenced by a military judge sitting as a special court-martial, was 180 days of confinement, a bad conduct

discharge, reduction in grade to E-1, and forfeiture of two-thirds pay for six months.[1] Article 19(a), UCMJ; R.C.M. 201(f)(2)(B)(i). Pursuant to the plea agreement, the military judge had to enter a sentence within the range of 90 to 180 days of confinement. (App. Ex. 1, para. 4.)

The government's sentencing exhibits included a stipulation of fact, personal data sheet, two enlisted performance reports (EPR), and an audio recording from victim S.G. (Pros. Exs. 1-3, 5.)

The defense submitted 12 good-character statements on Appellant's behalf; two medals; documentation regarding Appellant's selection for promotion "below the zone"; one diamond sharp; a security certificate; a photobiography; Appellant's unsworn statement in which he asked, among other things, for no bad conduct discharge; an excerpt from a Security Forces report; and a medical report regarding victim S.G. (Def. Exs. A-V.) Appellant called his second-line supervisor and his first sergeant to testify about his positive potential for rehabilitation. (R. at 139-43, 144-48.)

Court exhibits included an unsworn statement from each of the victims A.G. and S.G. (Ct. Exs. A, B.)

During sentencing argument, trial counsel requested a sentence of a bad conduct discharge, a reduction to E-1, forfeiture of two-thirds pay, and six months of confinement. (R. at 171.) Trial defense counsel asked for a reprimand, reduction in rank but without a specific rank mentioned, and the maximum confinement pursuant to the plea agreement, 180 days, but no bad conduct discharge. (R. at 177, 179-80, 181-82.)

[1] The maximum punishment, if the case had been referred to a general court-martial, would have been a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months. MCM, para 52.d(1).

The military judge sentenced Appellant to a reprimand, reduction to E-1, confinement for 90 days, and a bad conduct discharge. (R. at 187.) The military judge granted Appellant 179 days of pretrial confinement credit. (Id.)

In his post-sentencing submission of matters, Appellant requested clemency by "suspending or reducing his reduction in rank and commuting his reprimand, and that [the convening authority] grant any authorized clemency to the fullest extent permitted by law." (ROT, Vol. 1, *Request for Clemency*, dated 5 November 2023.) He did not ask for clemency regarding his bad conduct discharge. (Id.)

Appellant personally supplemented this assignment of error pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982), and cited sentences in three unrelated cases, the entries of judgment of which he included in his 23 December 2024 motion to attach.

Standard of Review

This Court reviews sentence appropriateness *de novo*. United States v. McAlhaney, 83 M.J. 164, 167 (C.A.A.F. 2023) (citation omitted). The Court may only affirm the sentence if it finds the sentence to be "correct in law and fact and determines, on the basis of the entire record, [it] should be approved." Article 66(d)(1), UCMJ.

Law

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." Article 66(d)(1)(A), UCMJ. The Court's authority to review a case for sentence appropriateness "reflects the unique history and attributes of the military justice system, [and] includes but is not limited to, considerations of uniformity and evenhandedness of sentencing decisions." United States v. Sothen, 54 M.J. 294, 296 (C.A.A.F. 2001) (citations omitted). The

Court "assess[es] sentence appropriateness by considering 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. Sauk, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (*en banc*) (*per curiam*) (alteration in original) (citations omitted).

Although this Court has great discretion to determine whether a sentence is appropriate, the Court lacks any authority to grant mercy. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted). Unlike the act of bestowing mercy through clemency, which was delegated to other channels by Congress, military Criminal Courts of Appeal are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988).

When considering the appropriateness of a sentence, the Court can consider the limits, or lack thereof, that a plea agreement placed on the sentence that could be imposed. *See* United States v. Fields, 74 M.J. 619, 625–26 (A.F. Ct. Crim. App. 2015).

Analysis

Appellant argues that his sentence to a bad conduct discharge was inappropriately severe. (App. Br. at 8.) Appellant claims "the degree of injuries in the case was the centerpiece of the Government's sentencing case." (Id.) But Appellant claims, as he did at the court-martial, that S.G. was making significant progress and continued to regain function over time, undercutting the government's argument about the lifetime impact on S.G. (Id.) His assignment of error is without merit.

Pursuant to Grostefon, Appellant personally submitted a supplement to his Assignment of Errors and a Motion to Attach entries of judgment for three cases, from Joint Base McGuire-Dix-Lakehurst, New Jersey, and F.E. Warren AFB, Wyoming. However, Appellant does allege or

explain how they are closely related to his case or that the sentences are highly disparate, United States v. Lacy, 50 M.J. 286, 288 (C.A.A.F. 1999), so he provides no basis upon which to invoke the Court's ability to ensure uniformity and evenhandedness. *See* United States v. Stanford, No. ACM 40327, 2024 CCA LEXIS 77, *11-12 (rejecting appellant's reference to another case in alleging sentence disparity). In fact, according to Appellant's motion to attach, TSgt John Lenk and MSgt Markus Hamlett received longer terms of confinement than Appellant, and SrA Legend Goodwin and MSgt Markus Hamlett were not alleged to have struck anybody or anything with their vehicle while driving drunk. Therefore, the other three cases are irrelevant to this assignment of error and fail to meet the standard for consideration under United States v. Jessie, 79 M.J. 437, 442 (C.A.A.F. 2020). *See* United States v. Behunin, No. ACM S32684, 2022 CCA LEXIS 412, *27-29 (A.F. Ct. Crim. App. 18 July 2022) (unpub. op.) (rejecting appellant's motion to attach entry of judgment of other airman in related case, under Jessie, finding other case was not "*closely* related"), *aff'd*, 83 M.J. 158 (C.A.A.F. 2023). *Compare* United States v. Blow, No. ACM S32631 (f rev), 2022 CCA LEXIS 495 (A.F. Ct. Crim. App. 23 August 2022) (unpub. op.) (pursuant to Jessie, considering sentence of co-actor in assault after finding cases were closely related).

Appellant claims he "presented a potent sentencing case." (Id.) The military judge is presumed to have considered Appellant's pre-sentencing case and followed the law, absent clear evidence to the contrary. United States v. Erickson, 65 M.J. 221, 225 (C.A.A.F. 2007). Appellant cites to nothing in the record that calls into question whether the military judge afforded Appellant's points the appropriate weight and followed the law. In fact, the military judge appeared to agree with the defense sentencing case to the extent that he adjudged a sentence of confinement at the very low end of the possible range, instead of one at the high end of the range that both trial counsel *and defense trial counsel* had requested. (R. at 171, 177.)

The military judge considered the evidence Appellant submitted to support his argument that victim S.G. was rehabilitating from her injuries. Even assuming, for argument's sake, that S.G. could eventually fully rehabilitate, it was not inappropriately severe for Appellant to receive a punitive discharge where he drank beyond the legal limit to drive, drove at a high rate of speed, caused a crash with two other innocent cars, and caused extensive personal injury and property damage. Appellant's claim does not warrant leniency -- which this Court cannot grant -- beyond what he received as part of his plea agreement and what he received from the military judge. This Court should deny this assignment of error.

III.

THE RECORD OF TRIAL SHOULD NOT BE REMANDED FOR CORRECTION, AND APPELLANT IS ENTITLED TO NO RELIEF.

Appellant claims the record of trial should be remanded for correction or, in the alternative, he should receive relief, because the audio recording of the court-martial and Defense Exhibits U and V are not present in the record of trial (ROT), and the audio recording of the preliminary hearing does not function. (App. Br. at 9.)

The ROT does contain the audio recording of the court-martial and Defense Exhibits U and V, and the version of the preliminary hearing in the ROT functions properly. The undersigned has ensured that Appellant's appellate defense counsel has received those items. We have filed, as part of our motion to attach, an email from Appellant's appellate defense counsel confirming they have received both exhibits and both audio recordings and can read and hear them.

Because the record of trial is complete and nothing materially prejudiced Appellant's substantial rights, the Court should reject this assignment of error.

IV.

APPELLANT WAS NOT DENIED SPEEDY POST-TRIAL PROCESSING.

Additional Facts

Appellant's sentencing took place on 30 October 2023. (R. at 187.)

The court reporter prepared a chronology. (ROT, Vol. 1, *Court Reporter's Chronology*, dated 19 January 2024.) She transcribed the court-martial from 16 November 2023 through 26 December 2023, when she forwarded it to trial counsel for review. (Id.) She certified the transcript on 16 January 2024. (Id.)

In addition, the government is submitting, with this Answer, a Motion to Attach the declaration of the Ramstein Law Center Non-Commissioned Officer in Charge (NCOIC), which provides just such commentary in an attached Moreno chronology. (*Declaration of TSgt Taylor*.) The declaration explains the legal office's processing of Appellant's case after the court-martial through their delivery of the electronic record of trial to JAJM. (Id.)

The case was docketed with this Court on 22 April 2024, 175 days after Appellant's court-martial ended.

Standard of Review

This Court reviews *de novo* an appellant's entitlement to relief for post-trial delay. United States v. Livak, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (citing United States v. Moreno, 63 M.J. 129, 135 (C.A.A.F. 2006)).

Law

In Moreno, CAAF established thresholds for facially unreasonable delay, including docketing with the Court of Criminal Appeals more than 30 days after the convening authority's action or when a Court of Criminal Appeals completes appellate review and renders its decision

more than 18 months after the case is docketed with the court. 63 M.J. 129, 142-143 (C.A.A.F. 2006). Post-trial processing of courts-martial has changed significantly since Moreno, including the requirement to issue an entry of judgment before appellate proceedings begin. *See* Livak, 80 M.J. at 633. Now, this Court applies an aggregate standard threshold of 150 days from the day the appellant was sentenced to docketing with this Court. Id.

When a case does not meet one of the above standards, the delay is presumptively unreasonable and in reviewing claims of unreasonable post-trial delay this Court evaluates (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right of timely review and appeal; and (4) prejudice. Moreno, 63 M.J. at 135 (citing Barker v. Wingo, 407 U.S. 514, 530 (1972)). All four factors are considered together and "[n]o single factor is required for finding a due process violation and the absence of a given factor will not prevent such a finding." Id. at 136.

In Moreno, CAAF identified three types of cognizable prejudice for purposes of an appellant's due process right to timely post-trial review: (1) oppressive incarceration; (2) anxiety and concern; and (3) impairment of the appellant's ability to present a defense at a rehearing. 63 M.J. at 138–39 (citations omitted). As to the first type of prejudice, where Appellant does not prevail on the substantive grounds of his appeal, there is no oppressive incarceration. Id. at 139. Similarly, looking at the third type of prejudice, where Appellant's substantive appeal fails, his ability to present a defense at a rehearing is not impaired. Id. at 140. Finally, with regard to the second type of prejudice, anxiety and concern, "the appropriate test for the military justice system is to require an appellant to show particularized anxiety or concern that is distinguishable from the normal anxiety experienced by prisoners awaiting an appellate decision." Id.

Where an appellant has not shown prejudice from the delay, there is no due process violation unless the delay is so egregious as to "adversely affect the public's perception of the fairness and integrity of the military justice system." United States v. Toohey, 63 M.J. 353, 362 (C.A.A.F. 2006). There must have been "unreasonable *and* unexplained post-trial delays." United States v. Tardif, 57 M.J. 219, 220 (C.A.A.F. 2002) (emphasis added). In such an instance, the appellate courts are to "tailor an appropriate remedy, if any is warranted, to the circumstances of this case." Id. at 225. Relief under Article 66, UCMJ, "should be viewed as the last recourse to vindicate, where appropriate, an appellant's right to timely post-trial processing and appellate review." Id. In deciding whether to invoke Article 66, UCMJ, to grant relief as a "last recourse," this Court laid out a non-exhaustive list of factors to be considered, including:

> (1) How long the delay exceeded the standards set forth in Moreno;
>
> (2) What reasons, if any, the Government set forth for the delay, and whether there is any evidence of bad faith or gross indifference to the overall post-trial processing of this case;
>
> (3) Whether there is some evidence of harm (either to the appellant or institutionally) caused by the delay;
>
> (4) Whether the delay has lessened the disciplinary effect of any particular aspect of the sentence, and is relief consistent with the dual goals of justice and good order and discipline;
>
> (5) Whether there is any evidence of institutional neglect concerning timely post-trial processing; and
>
> (6) Given the passage of time, whether the court can provide meaningful relief.

United States v. Gay, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015), *aff'd*, 75 M.J. 264 (C.A.A.F. 2016).

Analysis

Appellant claims he was denied speedy post-rehearing processing. (App. Br. at 14.) His argument fails using framework from Moreno, Livak, Barker, Toohey, Tardiff, and Gay.

1. Length of Delay

This factor weighs only minimally in favor of Appellant. The length of time is not "egregious;" it is only two weeks more than the 150-day benchmark set out in Livak. Appellant does not cite to any cases in which the 150-day standard was exceeded by a similarly small number of days and relief was granted. The United States has found several opinions over the last four years from this Court with 175 days or more of delay in which no relief was granted. *See* United States v. Anderson, 82 M.J. 82, 86 (C.A.A.F. 2022) (481 days); United States v. Byrne, No. ACM 40391, 2024 CCA LEXIS 346, *50 (A.F. Ct. Crim. App. 22 August 2024) (unpub. op.) (290 days); United States v. Gardner, No. ACM 39929, 2021 CCA LEXIS 604, *70-74 (A.F. Ct. Crim. App. 16 November 2021) (unpub. op.) (281 days); United States v. Dillon, No. ACM 40463, 2024 CCA LEXIS 322, *2 (A.F. Ct. Crim. App. 2 August 2024) (unpub. op.) (228 days); United States v. Cook, No. ACM 40333, 2024 CCA LEXIS 276, *70 (A.F. Ct. Crim. App. 3 July 2024) (unpub. op.) (200 days); United States v. Leipart, No. ACM 39711, 2023 CCA LEXIS 39, *83 (A.F. Ct. Crim. App. 26 January 2023) (unpub. op.) (183 days, where 574 pages of transcript took 109 days to produce); United States v. Brown, No. ACM 40066 (f rev), 2022 CCA LEXIS 710, *65-69 (A.F. Ct. Crim. App. 9 December 2022) (unpub. op.) (181 days); United States v. Jackson, No. ACM 39955, 2022 CCA LEXIS 300, *134-36 (A.F. Ct. Crim. App. 23 May 2022) (unpub. op.) (176 days); United States v. Harrington, No. ACM 39825, 2021 CCA LEXIS 524, *103-04 (A.F. Ct. Crim. App. 14 October 2021) (unpub. op.) (175 days).

Even though the delay is presumptively unreasonable, it does not end the inquiry. The delay alone is not sufficient to justify relief—it merely triggers a due process analysis under Barker.

2. Reasons for the Delay

Appellant does not take as much issue with the 81 days it took the court reporter to complete the transcript as the subsequent 94 days it took the base legal office to complete the record of trial and for JAJM to docket it with the Court. (App. Br. at 14 ("The court reporter taking eighty-one days to complete the transcript is slow, but is not the primary reason the delay weighs in [Appellant]'s favor.").) *See* United States v. Atencio, No. ACM S32738, 2024 CCA LEXIS 543, *10-11 (A.F. Ct. Crim. App. 20 December 2024) (noting delays in transcribing and assembling records of trial have not become institutional problem).

Appellant cites Atencio, too, but the Court found "some evidence of a lack of urgency or indifference concerning timely post-trial processing in this particular case." (App. Br. at 15 (citing Atencio, 2024 CCA LEXIS 543 at *10–11).) Appellant asserts "There is no explanation in the record for what happened in the ninety-four days between transcript completion and docketing." (App. Br. at 12.) However, the declaration of the Ramstein Law Center NCOIC provides just such commentary. (*Declaration of TSgt Taylor*.) It demonstrates that the legal office reasonably processed Appellant's case. The chronology notes daily post-trial processing activities and/or monitoring almost every week towards until the ROT was turned into JAJM on 8 February 2024 and uploaded to the eROT dashboard on 22 February 2024. (Id.)

This is not a situation in which processing of the case was forgotten or "fell between the cracks." Rather, the government was consistently trying to move the processing forward, but there were delays that were explained and reasonable. Ultimately, there is no evidence of a "deliberate

attempt to delay the trial in order to hamper the defense." Barker, 407 U.S. at 531. "A more neutral reason such as negligence … should be weighed less heavily." Barker, 407 U.S. at 531. Thus, this second factor should be neutral or only weigh slightly in Appellant's favor.

3. Appellant Did Not Assert the Right of Timely Review and Appeal

In his Assignments of Error, Appellant claims, ironically, he asserted his right to timely appellate review "on 9 August 2024 in a motion for enlargement of time." (App. Br. at 14-15.) He did not make a demand for timely review prior to that motion in which he sought to delay the appellate process. And he filed four more motions for enlargement of time after that 9 August 2024 delay request, totaling nine months of delay from docketing. This factor should weigh against Appellant.

4. Appellant Suffered No Prejudice Distinguishable from Normal Anxiety Awaiting Appellate Decision

Appellant's brief does not try to argue that he suffered oppressive incarceration or particularized anxiety or concern. He is no longer in confinement. And Appellant does not allege any way in which his ability to present his case in this appeal was prejudiced, presumably because his six motions for enlargements of time negate any claimed urgency in his appeal. Therefore, Appellant did not suffer a due process violation under Moreno, Barker, and Livak.

5. The Delay Was Not So Egregious as to Adversely Affect Public Perception; the Post-Trial Delays Were Both Reasonable and Explained; and Article 66, UCMJ, Relief is Not Justified

Appellant does not claim the delay in his case would adversely affect the public's perception of the fairness and integrity of the military justice system. And it does not meet the non-exhaustive Gay factors. The delay was merely two weeks beyond the 150-day standard, and the government demonstrated no bad faith or gross indifference to the overall processing of this case. As discussed above, Appellant faced no incarceration, oppressive or otherwise, and suffered

no anxiety or concern while awaiting an appellate decision. And the delay has not lessened the disciplinary effect of the sentence, and providing Appellant's requested relief would undermine the goals of good order and discipline. Appellant was found guilty of drunken driving that caused catastrophic personal injuries. This is not a case in which the Court should provide the "last recourse" of relief under Article 66(d), UCMJ. This Court should reject Appellant's assignment of error.

CONCLUSION

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

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division (Capt Matthew L. Blyth) on 21 January 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' MOTION TO ATTACH DOCUMENTS
v.	)	No. ACM S32778
Technical Sergeant (E-4) **CHRISTIAN M. BLAIR**, USAF, *Appellant.*	)	Before Panel No. 3 21 January 2025

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

Pursuant to Rule 23(b) of this Court's Rules of Practice and Procedure, the United States hereby submits this Motion to Attach Documents to address Appellant's claims in Issues III and IV of his Assignments of Error (AOE), alleging "numerous omissions" from the record of trial (ROT) and a violation of his speedy post-trial processing rights, respectively. The first attachment, addressing Issue III, is confirmation that we delivered the materials from the ROT to Appellant's appellate defense counsel and AF/JAJA received them. The second attachment, addressing Issue IV and United States v. Moreno, 63 M.J. 129 (C.A.A.F. 2006), is a declaration of the Non-Commissioned Officer in Charge (NCOIC) of Military Justice for the Ramstein Legal Center, Germany, incorporating a post-trial processing chronology.

The Court of Appeals for the Armed Forces held matters outside the record may be considered "when doing so is necessary for resolving issues raised by materials in the record." United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020). The Court concluded that, "based on experience . . . 'extra-record fact determinations' may be 'necessary predicates to resolving appellate questions.'" Id. at 442 (quoting United States v. Parker, 36 M.J. 269, 272 (C.M.A. 1993)). The issue of post-trial delay is raised by materials currently in the record but is not "fully resolvable by those materials." Jessie, 79 M.J. at 445.

In Issue III, Appellant asserts the ROT is missing the audio recording of the court-martial and Defense Exhibits U and V, and the audio recording of the preliminary hearing does not function. (App. Br. at 9.) The undersigned's paralegal has confirmed that the ROT in the Court's possession has all those items and they are legible and audible. On 10 January 2024, the undersigned provided a copy of the items, via the Department of Defense Secure Access File Exchange, to Appellant's appellate defense counsel, who confirmed he had received them and could view the exhibits and hear the audio recordings. The proposed attachment to the record is that email confirmation, which meets the standard in Jessie, because it resolves Issue III.

In Issue IV, Appellant claims he was denied speedy post-trial processing and is entitled to relief for an alleged violation of Moreno. (App. Br. at 14.) Appellant asserts "There is no explanation in the record for what happened in the ninety-four days between transcript completion and docketing." (App. Br. at 12.) Although the ROT includes a Court Reporter Chronology (ROT, Vol. 1), it did not address the base legal office's post-trial processing. The declaration and the Moreno chronology of the Ramstein Legal Center's NCOIC of Military Justice provide such information, so they meet the Jessie standard by helping the Court to resolve Issue IV.

WHEREFORE, the United States requests this Court grant this Motion to Attach documents.

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM S32778**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Christian M. BLAIR	)	**PANEL CHANGE**
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 10th day of February, 2025,

ORDERED:

The record of trial in the above styled matter is withdrawn from Panel 3 and referred to a Special Panel for appellate review.

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

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
GRUEN, PATRICIA A., Colonel, Appellate Military Judge
BREEN, DANIEL J., Lieutenant Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal