UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40618**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Liam M. SHIRLEY	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 26 July 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 31st day of July, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **3 October 2024**.

Counsel should not rely on any subsequent requests for enlargement of time being granted. Each request will be considered on its merits.

Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time if counsel previously replied in the affirmative.

Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal.

Appellant's counsel is 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, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **LIAM M. SHIRLEY,** United States Air Force, *Appellant.*	)	No. ACM 40618
	)	26 July 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, Staff Sergeant (SSgt) Liam M. Shirley, Appellant, hereby moves for the first enlargement of time to file his assignments of error. SSgt Shirley requests an enlargement for a period of 60 days, which will end on **3 October 2024**. The record of trial was docketed with this Court on 5 June 2024. From the date of docketing to the present date, 51 days have elapsed. On the date requested, 120 days will have elapsed.

WHEREFORE, SSgt Shirley respectfully requests that 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 26 July 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
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29 July 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) LIAM M. SHIRLEY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40618 Panel No. 2

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 29 July 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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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 (SECOND)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **LIAM M. SHIRLEY,** United States Air Force,	)	No. ACM 40618
Appellant.	)	25 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, Staff Sergeant (SSgt) Liam M. Shirley, Appellant, hereby moves for a second enlargement of time to file his assignments of error. SSgt Shirley requests an enlargement for a period of 30 days, which will end on **2 November 2024**. The record of trial was docketed with this Court on 5 June 2024. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 9 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Shirley, consistent with his pleas, of three specifications alleging domestic violence, in violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b. R. at 75; Charge Sheet. The military judge sentenced him to a reduction to the grade of E-1, dishonorable discharge, and 60 months' confinement for each specification, with each period of confinement running concurrently. R. at 153. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id*. The convening authority also waived all automatic forfeitures for a

period of six months, or until SSgt Shirley's release from confinement, or expiration of term of service, for the benefit of SSgt Shirley's dependents. *Id*.

The record of trial includes three prosecution exhibits, two defense exhibits, and eight appellate exhibits. The transcript is 153 pages. SSgt Shirley is confined.

Through no fault of SSgt Shirley, 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. SSgt Shirley 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, SSgt Shirley respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
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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 25 September 2024.

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
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30 September 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) LIAM M. SHIRLEY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40618 Panel No. 2

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 30 September 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
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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 OUT OF TIME (THIRD)**
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5) **LIAM M. SHIRLEY,** United States Air Force,	)	No. ACM 40618
Appellant.	)	28 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 (4) of this Honorable Court's Rules of Practice and Procedure, Staff Sergeant (SSgt) Liam M. Shirley, Appellant, hereby moves for a third enlargement of time to file his assignments of error. SSgt Shirley requests an enlargement for a period of 30 days, which will end on **2 December 2024**. The record of trial was docketed with this Court on 5 June 2024. From the date of docketing to the present date, 145 days have elapsed. On the date requested, 180 days will have elapsed. Undersigned counsel submits this motion out of time, due to no fault of SSgt Shirley. Undersigned counsel was attentive to her docket and checked to see if any filings were due last week. However, undersigned counsel errored by using a calendar and miscalculating when SSgt Shirley's motion was due. Undersigned counsel recognized her error today and filed this motion as soon as she realized. SSgt Shirley's case is undersigned counsel's ninth priority, and she has not yet begun reviewing his case.

On 9 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Shirley, consistent with his pleas, of three specifications alleging domestic violence, in violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b. R. at 75; Charge Sheet. The military judge sentenced him to a reduction to the grade of E-1, dishonorable discharge, and 60 months' confinement for each specification, with each period of

confinement running concurrently. R. at 153. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id*. The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Shirley's release from confinement, or expiration of term of service, for the benefit of SSgt Shirley's dependents. *Id*.

The record of trial includes three prosecution exhibits, two defense exhibits, and eight appellate exhibits. The transcript is 153 pages. SSgt Shirley is confined.

Through no fault of SSgt Shirley, 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. SSgt Shirley 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, SSgt Shirley respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

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 28 October 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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29 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) LIAM M. SHIRLEY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME OUT OF TIME ACM 40618 Panel No. 2

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.

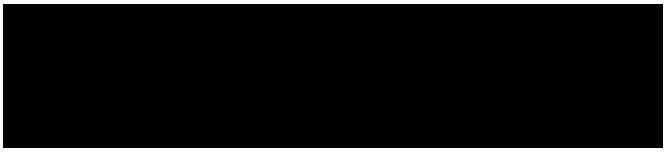
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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 to the Air Force Appellate Defense Division on 29 October 2024.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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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. 2
Staff Sergeant (E-5) **LIAM M. SHIRLEY,** United States Air Force,	)	No. ACM 40618
Appellant.	)	22 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, Staff Sergeant (SSgt) Liam M. Shirley, Appellant, hereby moves for a fourth enlargement of time to file his assignments of error. SSgt Shirley requests an enlargement for a period of 30 days, which will end on **1 January 2025**. The record of trial was docketed with this Court on 5 June 2024. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 9 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Shirley, consistent with his pleas, of three specifications alleging domestic violence, in violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b. R. at 75; Charge Sheet. The military judge sentenced him to a reduction to the grade of E-1, dishonorable discharge, and 60 months' confinement for each specification, with each period of confinement running concurrently. R. at 153. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id*. The convening authority also waived all automatic forfeitures for a

period of six months, or until SSgt Shirley's release from confinement, or expiration of term of service, for the benefit of SSgt Shirley's dependents. *Id*.

The record of trial includes three prosecution exhibits, two defense exhibits, and eight appellate exhibits. The transcript is 153 pages. SSgt Shirley is confined.

Through no fault of SSgt Shirley, 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. SSgt Shirley 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's workload includes representing 25 clients. 12 cases are currently pending initial brief before this Court. Nine 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 is due to the Court of Appeals for the Armed Forces (CAAF) on Monday, 25 November 2024. Currently, undersigned counsel is dedicating her time to editing the appellant's brief in preparation of filing. Following the submission of appellant's reply brief, undersigned counsel will need to prepare for oral argument via multiple moot arguments and oral argument is scheduled at the CAAF on 10 December 2024.
2. *United States v. Casillas*, No. ACM 40551 – The record of trial includes 19 prosecution exhibits, 4 defense exhibits, 65 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 14 December 2023.

3. *United States v. Manzano-Tarin*, USCA Dkt. No. 25-0033/AF – The appellant's supplement to the petition for grant of review is due on 12 December 2024.
4. *United States v. Dawson*, No. ACM 24041 – The record of trial includes 13 prosecution exhibits, 9 defense exhibits, 1 court exhibit, 41 appellate exhibits, and 761 transcript pages. The appellant is not confined. Undersigned counsel has prioritized this case above others because it was docketed on 4 October 2023. This Court and undersigned counsel received the verbatim transcript on 9 August 2024.
5. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined, and his case was docketed on 26 January 2024.
6. *United States v. Blair*, No. ACM S32778 – The record of trial includes 7 prosecution exhibits, 22 defense exhibits, 6 appellate exhibits, and 187 transcript pages. The appellant is not confined, and his case was docketed on 22 April 2024.
7. *United States v. Roberts*, No. ACM 40608 – The 11-volume record of trial includes 30 prosecution exhibits, 3 defense exhibits, 1 court exhibit, 102 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 7 May 2024.
8. *United States v. Robinson*, No. ACM 24044 – The 10-volume record of trial includes 23 prosecution exhibits, 8 defense exhibits, 58 appellate exhibits, and 1,112 transcript pages. The appellant is not confined, and his case was docketed on 30 May 2024.

9. *United States v. Lovell*, No. ACM 40614 – The record of trial includes 4 prosecution exhibits, 5 appellate exhibits, and 85 pages of transcript. The appellant is not confined and his case was docketed on 31 May 2024.

In addition to the above-listed priorities, undersigned counsel anticipates filing a CAAF petition and supplement in one other case: *United States v. Matthew*, No. ACM 39796 (reh).

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

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

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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25 November 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) LIAM M. SHIRLEY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME OUT OF TIME ACM 40618 Panel No. 2

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]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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 to the Air Force Appellate Defense Division on 25 November 2024.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
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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. 2
Staff Sergeant (E-5) **LIAM M. SHIRLEY,** United States Air Force, *Appellant.*	)	No. ACM 40618
	)	20 December 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, Staff Sergeant (SSgt) Liam M. Shirley, Appellant, hereby moves for a fifth enlargement of time to file his assignments of error. SSgt Shirley requests an enlargement for a period of 30 days, which will end on **31 January 2025**. The record of trial was docketed with this Court on 5 June 2024. From the date of docketing to the present date, 198 days have elapsed. On the date requested, 240 days will have elapsed.

On 9 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Shirley, consistent with his pleas, of three specifications alleging domestic violence, in violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b. (R. at 75; Charge Sheet.) The military judge sentenced him to a reduction to the grade of E-1, dishonorable discharge, and 60 months' confinement for each specification, with each period of confinement running concurrently. (R. at 153.) The convening authority took no action on the findings. (Convening Authority Decision on Action.) The convening authority suspended the

reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. (*Id.*) The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Shirley's release from confinement, or expiration of term of service, for the benefit of SSgt Shirley's dependents. (*Id.*)

The record of trial includes three prosecution exhibits, two defense exhibits, and eight appellate exhibits. The transcript is 153 pages. SSgt Shirley is confined.

Through no fault of SSgt Shirley, undersigned counsel has been working on other assigned matters and has yet to complete 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. SSgt Shirley 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 represents twelve clients, with two cases pending initial brief before this Court. One case has priority over this case: *United States v. Blair*, ACM S32778. The record of trial includes seven prosecution exhibits, twenty-two defense exhibits, six appellate exhibits, two court exhibits, and a 187 page transcript. Counsel has completed the brief in *Blair* and will file shortly.

Counsel has begun review of the current case and does not anticipate requiring an additional enlargement of time.

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

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

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 20 December 2024.

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

23 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) LIAM M. SHIRLEY, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40618 Panel No. 2

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]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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CERTIFICATE OF FILING AND SERVICE

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

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR WITHDRAWAL OF APPELLATE DEFENSE COUNSEL**
v.	)	Before Panel No. 2
Staff Sergeant (E-5) **LIAM M. SHIRLEY,** United States Air Force, *Appellant.*	)	No. ACM S32767 20 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). Staff Sergeant (SSgt) Liam M. Shirley, Appellant, consents to Maj Golseth's withdrawal as appellate defense counsel. Maj Matthew Blyth has been detailed to represent SSgt Shirley and provided notice of his appearance in Appellant's Motion for Enlargement of Time (Fifth), filed on 20 December 2024. A thorough turnover of the record between counsel has been completed. The reason for Maj Golseth's withdrawal is because Maj Blyth is available to review SSgt Shirley's record of trial sooner than Maj Golseth. Maj Blyth has begun reviewing SSgt Shirley's case and does not anticipate requiring an additional enlargement of time beyond the request for a fifth enlargement. Appellant's Motion for Enlargement of Time (Fifth), 20 December 2024. By comparison, Maj Golseth currently has five cases ahead of SSgt Shirley's. Granting this motion will allow SSgt Shirley's case to progress by avoiding the need to wait for Maj Golseth to review SSgt Shirley's record. A copy of this motion will be sent to SSgt Shirley simultaneous to its filing.

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

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 Appellate Government Division on 20 December 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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Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**BRIEF ON BEHALF OF**
Appellee,	)	**APPELLANT**
	)	
v.	)	
	)	Before Panel No. 2
Staff Sergeant (E-5)	)	
LIAM M. SHIRLEY,	)	No. ACM 40618
United States Air Force,	)	
Appellant.	)	29 January 2025

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

Assignments of Error

I.

Whether Staff Sergeant Shirley's sentence is inappropriately severe.

II.

Whether, as applied to Staff Sergeant Shirley, 18 U.S.C. § 922 is unconstitutional because the Government cannot demonstrate that barring his possession of firearms is "consistent with the Nation's historical tradition of firearm regulation."[1]

Statement of the Case

On 9 January 2024, a general court-martial composed of a military judge sitting alone convicted Staff Sergeant (SSgt) Liam M. Shirley, consistent with his pleas, of three specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b.[2] (R. at 75; Charge Sheet.) The military judge sentenced him to a reduction to the grade of E-1, a

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[1] *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022).

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

dishonorable discharge, and 60 months' confinement for each specification, with each period of confinement running concurrently. (R. at 153.) The convening authority took no action on the findings but suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. (Convening Authority Decision on Action.) The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Shirley's release from confinement, or expiration of term of service, for the benefit of SSgt Shirley's dependents. (*Id.*)

Statement of Facts

SSgt Shirley joined the Air Force in 2017 shortly after graduating high school. (R. at 129.) He and his wife, MS, had their first child, O, in July 2022. (Pros. Ex. 1 at 1.) O's delivery required a c-section, and MS experienced difficulties with her recovery. (R. at 112.) Combined with postpartum depression, she was "bedridden for . . . the first couple of weeks after [O] was born." (*Id.*) It was painful for her to even hold O. (*Id.*) This led SSgt Shirely to take on the majority of care for O during this stressful period. (R. at 112–13.)

On numerous occasions, SSgt Shirley could not get O to calm down, which caused him to panic and become frustrated. (Pros. Ex. 1 at 2.) He squeezed O in frustration until O stopped crying. (*Id.*) SSgt Shirley squeezed for five to ten seconds at a time and could hear the air leaving O's lungs when this occurred. (*Id.*) As a result, O had fractures to bones in his torso, including his ribs and his collarbone, as well as a subconjunctival hemorrhage, or broken blood vessel, in his eyes. (*Id.*) On some occasions, O became unconscious and SSgt Shirley had to perform CPR to

resuscitate him. Additionally, while changing O's diaper, SSgt Shirley yanked down forcefully on O's legs to keep him from moving them, causing fractures. (*Id.*) MS noticed O was acting abnormally and took him to the emergency room. (*Id.*) He was admitted to the hospital where physicians ordered a child abuse and neglect consult. (*Id.* at 2–3.) A physician determined there was a high probability of abuse. (*Id.* at 3.)

SSgt Shirley interviewed with the Air Force Office of Special Investigations, where he admitted to the above conduct. (Pros. Ex. 1, Attachment 6.) O was removed from SSgt Shirley's care. (R. at 115.) MS explained that her initial reaction was to divorce SSgt Shirley. (R. at 114.)

While the military justice process proceeded, SSgt Shirley was allowed visitation with O, eventually building to three-hour increments for five days a week. (R. at 116.) He always showed up unless MS's parents were out of town, and that was only because they could not do the visits without the parents. (R. at 117.) This amounted to over 600 hours of visitation. (R. at 131.) These visits made it clear to MS's mother that O "adore[d]" SSgt Shirley. (R. at 93.) MS's father noted "impressive" growth in SSgt Shirley's parenting during this time. (R. at 103–04.) Both parents believed SSgt Shirley was willing to take the rehabilitative steps necessary to be a better father. (R. at 94, 105.) SSgt Shirley went on medication and went to couples counseling with MS. (R. at 122.) He repeatedly asked for help from Family Advocacy, including domestic violence or anger management courses, but Family Advocacy was unhelpful. (R. at 130–31.)

The Government preferred charges for attempted murder and three specifications of domestic violence in violation of Article 80 and 128b, UCMJ, 10 U.S.C. §§ 880, 928b (2018). The preliminary hearing officer, a sitting reserve military judge, concluded there was no probable cause to support the attempted murder specification. (Preliminary Hearing Officer Report at 1, 8, dated 21 May 2023.) The convening authority referred the charge anyway.

At the court-martial, SSgt Shirley expressed deep remorse and apologized to his son, his wife, and her family. (R. at 126–28.) He explained that he "quickly burnt out" with the stressors of being a parent for the first time. (R. at 129.) He did not reach out for help or assistance, as he knew he should have. (R. at 129–30.) The military judge issued the sentence he was required to issue under the plea agreement: a dishonorable discharge and sixty months' confinement. (R. at 153; App. Ex. III at 2.) The military judge exercised discretion only in adjudging a reduction to the grade of E-1. (R. at 153.)

O had no long-term complications from SSgt Shirley's actions. (R. at 123.) MS was not sure if their marriage would survive, but she nonetheless wanted SSgt Shirley in O's life. (R. at 124–25.) In her post-trial submission of matters to the convening authority, MS requested a reduction in the sentence, although the convening authority did not have the power to do so. (MS Post-trial Submission of Matters, dated 10 January 2024.) She stated that she would not make the request if she believed SSgt Shirley was a danger to her son. (*Id.* at 2.)

Argument

I.

Staff Sergeant Shirley's sentence is inappropriately severe.

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

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), UCMJ, 10 U.S.C. § 866(d)(1) (Supp. IV 2023). 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). An accused's decision to agree to the terms of a plea agreement is but *one* factor to consider, and it "does not mean [the Court] surrender[s] to the parties or military judge [its] duty to determine sentence appropriateness" when considering all the circumstances of a case. *United States v. Williams*, No. 202300217, 2024 CCA LEXIS 111, at *6 (N-M. Ct. Crim. App. 15 Mar. 2024).

"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), UCMJ, 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).

Analysis

The military judge had no meaningful discretion in assessing a sentence. But this Court, in its sentence appropriateness review, does. SSgt Shirley asks that this Court to "do justice" and approve only an appropriate amount of confinement.

"[A] court-martial shall impose punishment that is sufficient, *but not greater than necessary*, to promote justice and to maintain good order and discipline in the armed forces." Article 56(b), UCMJ (emphasis added). With this framework in mind, this Court can consider what is an appropriate sentence for this crime and this offender. There are numerous important aspects of the sentencing case that the military judge could not consider, even if he wanted to.

First, SSgt Shirley demonstrated tremendous personal growth as a parent and commitment to his son after the offenses. He spent hundreds of hours with O, never missing a chance to be with his son. (R. at 116–17, 131.) His mother- and father-in-law watched the changes in him as a parent. (R. at 94, 105.) In post-trial submissions, MS begged for a reduction in sentence, even if the convening authority lacked such power. (MS Post-trial Submission of Matters, dated 10 January 2024.) Each of the three recognized the rehabilitation potential that SSgt Shirley showed. He could have given up, knowing that he would be separated from his son for an extended period. But he persevered. Additionally, SSgt Shirley admitted his crimes and sought help from on-base resources, which were somewhat unhelpful in dealing

with an accused who needed help. Nonetheless, he took courses and pursued self-improvement. This type of rehabilitation potential belies the need for a sixty-month sentence.

Second, as bad as the offenses were, they left no lasting impact on O. MS and her parents testified that O was a happy and healthy eighteen-month-old at the time of the court-martial. (R. at 123–25.) MS and her parents, all deeply affected by the offenses, were defense witnesses and spoke positively about SSgt Shirley's future potential as a parent. The lack of victim impact sets this case apart.

Third, the fact that SSgt Shirley entered a plea agreement for sixty months' confinement is little indication of the sentence's appropriateness. This Court can read between the lines. The convening authority referred an attempted murder charges, despite no probable cause for the offense, to build up an unassailable negotiating position. SSgt Shirley took the unfavorable deal in front of him. A bad deal does not an appropriate sentence make. *See Williams*, 2024 CCA LEXIS 111, at *6 (stating that a court of criminal appeals (CCA) maintains its obligation to review for appropriateness despite a plea agreement).

This Court has the power to ignore the plea agreement and approve only an appropriate sentence. In this case, it is no more than three years' confinement.

WHEREFORE, SSgt Shirley respectfully requests this Honorable Court approve no more than three years' confinement.

II.

The unconstitutional application of 18 U.S.C. § 922 to Staff Sergeant Shirley warrants correction.

Additional Facts

After SSgt Shirley's conviction, the Government determined that his conviction qualified for a firearms prohibition under 18 U.S.C. § 922. (EOJ.)

Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Zegarrundo*, 77 M.J. 612, 613–14 (A.F. Ct. Crim. App.p 2018) (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Vanzant*, 84 M.J. 671, 674, 680 (A.F. Ct. Crim. App. 2024), *rev. granted*, USCA Dkt. No. 24-0182, ___ M.J. ___, 2024 CAAF LEXIS 640 (C.A.A.F. Oct. 17, 2024) (mem.).

Law and Analysis

The CCAs possess "limited jurisdiction, defined entirely by statute." *United States v. Arness*, 74 M.J. 441, 442 (C.A.A.F. 2015) (citation omitted). The CAAF rejected the CCAs jurisdiction under Article 66(d)(1), UMCJ, to address the firearms prohibition in the Statement of Trial Results (STR). *United States v. Williams*, ___ M.J. ___, 2024 CAAF LEXIS 501, at *12–13 (C.A.A.F. 5 September 2024). Yet this Court still has the power to correct the unconstitutional deprivation of SSgt Shirley's Second Amendment right to bear arms through Article 66(d)(2), UCMJ. *See also Williams*, 2024 CAAF LEXIS 501, at *14–15 (considering relief under that statute but rejecting it only because of the unique procedural posture of the case).

Article 66(d)(2), UCMJ, authorizes this Court to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the" EOJ.[3] This Court should use this authority to direct correction of the unconstitutional application of 18 U.S.C. § 922 to SSgt Shirley.

1. 18 U.S.C. § 922 cannot constitutionally apply to SSgt Shirley.

The Government, in the STR and EOJ, only indicated that 18 U.S.C. § 922 applied to the case, but did not specify a provision. Presumably it was subsection (g)(1)'s prohibition arising from a conviction of a crime punishable by imprisonment for a term greater than one year.

"The military has a hierarchical scheme as to rights, duties, and obligations." *United States v. Romano*, 46 M.J. 269, 274 (C.A.A.F. 1997). Above all is the Constitution, under which applicable statutes must fall in line. *See id.* "While a lower source on the hierarchy may grant additional or greater rights than a higher source, those additional rights may not conflict with a higher source." *Id.* As applied to SSgt Shirley, the question then becomes: Does the purported application of the lifetime firearm ban comport with the Second Amendment?

When evaluating that question, the Supreme Court of the United States has articulated the governing test:

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[3] A CCA's authority to act may differ from the CAAF's ability to address this issue under Article 67, UCMJ, 10 U.S.C. § 867, a question CAAF may resolve in *United States v. Johnson*, No. ACM 40257, USCA Dkt. No. 24-0004/SF, 84 M.J. 343 (C.A.A.F. Mar. 29, 2024), *vacated and review of other issues granted*, ___M.J. ___, 2024 CAAF LEXIS 561 (C.A.A.F. 24 September 2024) (mem.). The military judge's inclusion of the STR and its First Indorsement—and the firearms prohibition therein—into the EOJ is one that SSgt Shirley asserts is a "decision, judgment, or order" that, for the same reasons articulated below in this brief, was "incorrect in law." *Id.*

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The [G]overnment must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Bruen, 597 U.S. at 17 (quoting *Konigsberg v. State Bar of Cal.*, 336 U.S. 36, 50 n.10 (1961)).

Broadly speaking, and though not without limitation, the Second Amendment "confers an individual right to keep and bear arms." *D.C. v. Heller*, 554 U.S. 570, 623 (2008). As such, the Second Amendment plainly covers SSgt Shirley's right to keep and bear arms, even after his conviction. And, as *Bruen*'s test set out above makes clear, it then falls on the Government to show why its lifetime regulation of that right comports with America's "historical tradition of firearm regulation." 597 U.S. at 17.

The Supreme Court most recently took up the contours of this assessment in *United States v. Rahimi*, 602 U.S. 680 (2024). Concluding that 18 U.S.C. § 922(g)(8) "fits comfortably within [the Nation's historical] tradition," the Court considered whether the regulation at issue was "relevantly similar"—as opposed to identical—to those acceptable to the Nation's founding generation. *Id.* at 690, 692. The determination was clear under the facts specific to *Rahimi* because "the Government offer[ed] ample evidence that the Second Amendment permits the disarmament of individuals who pose" what the Court described as "a clear threat of physical violence to another." *Id.* at 693, 698. But the Court cabined its approval, limiting its affirmance to *temporary* disarmament after a finding of a credible threat to physical safety and noting the vital nexus found between Subsection (g)(8) and the historical

tradition of "banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse." *Id.* at 698 (citations omitted); *see also id.* at 701–02 (rejecting the contention "responsible" is the governing principle in any situation).

Applying this framework to SSgt Shirley's offenses, even if they did involve violence, it was not the type of violence that lies deeply rooted in history and tradition:

> [A]ctual "longstanding" precedent in America and pre-Founding England suggests that a firearms disability can be consistent with the Second Amendment to the extent that . . . its basis credibly indicates *a present danger that one will misuse arms against others and the disability redresses that danger*.

C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y 695, 698 (2009) (emphasis added). Prior to 1961, "the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a 'crime of violence.'" *Id.* at 699. Earlier, the Uniform Firearms Act of 1926 and 1930 stated that "a person convicted of a 'crime of violence' could not own or have in his possession or under his control, a pistol or revolver." *Id.* at 701, 704 (quotations omitted). A "crime of violence" meant "committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, [larceny], burglary, and housebreaking." *Id.* at 701 (quotations omitted). It was not until 1968 that Congress "banned possession and extended the prohibition on receipt to include any firearm that ever had traveled in interstate commerce." *Id.* at 698. "[I]t is difficult to see the justification for the complete lifetime ban for all felons that federal law has imposed only since 1968." *Id.* at 735.

The Third Circuit recently adopted this logic to conclude that 18 U.S.C. § 922(g)(1) was unconstitutional as applied to an appellant with a conviction for making a false statement to obtain food stamps, which was punishable by five years of confinement. *Range v. AG United States*, 2024 U.S. App. LEXIS 32560, at *3 (3rd Cir. 24 December 2024). Evaluating 18 U.S.C. § 922(g)(1) in light of *Bruen*, the Third Circuit noted that the earliest version of the statute prohibiting those convicted of crimes punishable by more than one year of imprisonment—from 1938— "applied only to *violent* criminals." *Id.* at *16. It found no "relevantly similar" analogue to imposing lifetime disarmament upon those who committed nonviolent crimes. *Id.* at *15–18. The Third Circuit went beyond that, though, to also observe, "Founding-era laws often prescribed the forfeiture of the weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally." *Id*. at *21–22 (citations omitted). The Third Circuit stated that even if the appellant *had* used a gun, "[G]overnment confiscation of the instruments of crime (or a convicted criminal's entire estate) differs from a status-based lifetime ban on firearm possession," strongly calling into question the constitutionality of any lifetime firearm ban. *Id*. at *22.

On this analysis, the Government has not proven—and cannot prove—that such a ban as applied to SSgt Shirley is consistent with this country's history and tradition. SSgt Shirley's offenses, while violent, still do not fit within the history and tradition of firearms regulation. Especially if one considers that the ban is permanent. *See Rahimi*, 602 U.S. at 702 ("Rather, we conclude only this: An

individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.").

2. This Court may exercise its jurisdiction under Article 66(d)(2), UCMJ.

This error occurred "in the processing of the court-martial after the" EOJ. Article 66(b)(2), UCMJ. The applicable Air Force regulation required that "*[a]fter* the EOJ is signed by the military judge and returned to the servicing legal office, the [Staff Judge Advocate] signs and attaches to the [EOJ] a first indorsement, indicating whether . . . firearm prohibitions are triggered." Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, ¶ 20.41 (Jan. 24, 2024) (emphasis added) (DAFI 51-201). The EOJ shows this is precisely what happened. *Compare* EOJ at 3, *with* EOJ at 4. This Court's authorized "duties" are set out across the entirety of Article 66(d), UCMJ. As such, when an appellant raises an error occurring after entry of judgment, Subsection (d)(2) provides an independent jurisdictional basis. *Williams*, 2024 CAAF LEXIS 501, at *13–14.

This Court's authority to review the erroneous firearm ban under Subsection (d)(2) is consistent with this Court's published opinion in *Vanzant*, 84 M.J. 671. In *Vanzant*, this Court determined it did not have authority to act on collateral consequences that are not a part of the findings or sentence under Article 66(d)(1), UCMJ. *Id*. at 680 ("Article 66(d), UCMJ, provides that a CCA 'may act only with respect to the findings and sentence as entered into the record under [Article 60c, UCMJ, 10 U.S.C. § 860c].'"). The CAAF agreed with this interpretation. *Williams*, 2024 CAAF LEXIS 501, at *11–13. But whereas *Vanzant* and *Williams* concern those matters leading up to the EOJ, Appellant is asking this Court to review an error in

post-trial processing *after* the EOJ under Article 66(d)(2), UCMJ, which this Court did not analyze in *Vanzant*. *See Vanzant*, 84 M.J. at 680 (quoting the language of Subsection (d)(1), not (d)(2)).

Vanzant does not control review of this issue as raised under Article 66(d)(2), UCMJ. *But see United States v. Lawson*, No. ACM 23034, 2024 CCA LEXIS 431, at *2 (A.F. Ct. Crim. App. 17 Oct. 2024) (broadly summarizing *Vanzant* as standing for the proposition that "the 18 U.S.C. § 922 firearm prohibition notation included in the staff judge advocate's indorsement to the [EOJ] is beyond a [CCA's] statutory authority to review"). The characterization of *Vanzant* in *Lawson* is incorrect. The Section 922 notation in the EOJ is not beyond this Court's statutory authority to review under Subsection (d)(2). *See Williams*, 2024 CAAF LEXIS 501, at *13 (calling Article 66(d)(2), UCMJ, the "error-correction authority"). Subsection (d)(1) is distinct, and that section is all *Vanzant* analyzes.

Using the CAAF's analysis in *Williams*, this Court should find jurisdiction under Subsection (d)(2) and ensure correction of the unconstitutional firearms error in post-trial processing tied to the facts of SSgt Shirley's court-martial. To effectuate any remedy, this Court should use its power under R.C.M. 1112(d)(2), which permits this Court to send a defective record back to the military judge for correction. This is appropriate because the First Indorsement is a required component of the EOJ, albeit not part of the "findings" and "sentence," and the error materially affects SSgt Shirley's constitutional rights. R.C.M. 1111(b)(3)(F); R.C.M. 1112(b)(8); DAFI 51-201, at ¶ 20.41.

WHEREFORE, this Court should remand the record to correct the EOJ's unconstitutional firearm prohibition or grant other relief it deems warranted to effectuate the same.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 29 January 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR**
Appellee,	)	
	)	
v.	)	
	)	No. ACM 40618
Staff Sergeant (E-5)	)	
LIAM M. SHIRLEY,	)	Before Panel 2
United States Air Force	)	
Appellant.	)	27 February 2025

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

ISSUES PRESENTED

I.

WHETHER [APPELLANT'S] SENTENCE IS INAPPROPRIATELY SEVERE.

II.

WHETHER, AS APPLIED TO [APPELANT], 18 U.S.C. § 922 IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT CANNOT DEMONSTRATE THAT BARRING HIS POSSESSION OF FIREARMS IS "CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION."

STATEMENT OF THE CASE

On 9 January 2024, a general court-martial composed of a military judge sitting alone convicted Appellant, consistent with his pleas, of three specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. (*Entry of Judgment*, dated 27 Mar 2021, ROT, Vol. 1.) In accordance with Appellant's plea agreement, the military judge sentenced Appellant to a dishonorable discharge and 60 months' confinement for each specification, to run concurrently. (Id.; R. at 153.) Additionally, the military judge

adjudged the reduction in rank to E-1, consistent with trial counsel's recommendation. (Id. at 139-140, 153.) The convening authority took no action on the findings but waived automatic forfeitures and suspended Appellant's reduction in rank for a period of six months, unless sooner vacated, specifically "to maximize the benefit to [Appellant's] dependent[s]." (*Convening Authority Decision on Action*, dated 12 Mar 2024, ROT, Vol. 1.) The remainder of the sentence was approved. (Id.)

STATEMENT OF FACTS

Appellant's son, O, was born on 6 July 2022. (Pros. Ex. 1 at 1.) Following his birth, O experienced respiratory issues which required continuous positive airway pressure (CPAP) treatment for 3 days in the neonatal intensive care unit (NICU).[1] (Pros. Ex. 1 at 11.) When O was about 28 days old, he was alone with Appellant while MS, Appellant's spouse and O's mother, was "away."[2] (Id. at 2.) During that time, O became "fussy" and would not stop crying. (Id.) Appellant "took out his frustration" by "squeezing" the infant until he stopped breathing. (Id.) For the next couple months, Appellant continued to handle his frustration with O in this manner when O was alone with him. (Id.) Appellant admitted to squeezing O to make him stop breathing a total of approximately 50 times over the span of the 90 days O had been alive. (Id.)

Appellant explained that he would either cause O to stop breathing by squeezing O against his chest or by cradling O with his right arm and using his left arm to squeeze O against his chest. (R. at 26; Pros. Ex. 1 at 2..) In both manners, Appellant would squeeze O for several

[1] During his statement to OSI, Appellant clarified that O was not born prematurely and, instead, was a week overdue when MS's labor was induced. (Pros. Ex. 1, Attach. 6.)

seconds until he heard the air leaving O's lungs, and Appellant knew that O could no longer breathe. (Id.) During the plea colloquy, Appellant specifically stated:

> I continued to squeeze [O], I could hear the air escaping his lungs, and his crying eventually stopped and he would appear asleep…
>
> When I squeezed him hard against my chest, I knew that what I was doing was wrong because I could tell from [O]'s body language that I was causing him discomfort since my actions immediately muffled his cries and eventually led to silence him completely to the point of unconsciousness.

(R. at 26.)

On approximately six separate occasions, between 6 August and 17 September 2022, Appellant admitted that he squeezed O until O became unconscious from a lack of oxygen. (Pros. Ex. 1 at 2.) . Those times, Appellant had to perform cardiopulmonary resuscitation (CPR) on O to prevent O's death. (Id.) On 11 October 2022, Appellant squeezed O until he heard O's collarbone "pop." (Id.) The next day, MS noticed that O was acting "abnormally."[3][4] (Id.) It seemed that certain areas of O's body were sensitive when they were touched and that he had visible swelling around his collarbone and bruising on his back. (Id. at 2, 20.) O was then taken to an emergency room (ER). (Id.)

During the initial ER evaluation, the treating physician determined that O's collarbone was fractured and that it had splintered away from the rest of the bone in a manner that raised

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[3] While the word "abnormally" was used in the Stipulation of Fact, the other evidence indicates that O had demonstrated similar behavior prior to 12 October. (Pros. Ex. 1 at 24.) Appellant and MS told medical providers that O had seemed "hypersensitive" and did not want to be touched. (Pros. Ex. 1. at 24.) They also told providers that he had been "hypersensitive before and so they thought this was just occurring again and if they left him alone, he would be better." (Id.)

[4] Medical records further indicate that O was brought to the emergency room (ER) on 17 August 2022 after his maternal grandmother, who was babysitting at that time, called for emergency medical services (EMS). (Id. at 21, 24.) During that ER visit, he was examined for conjunctival hemorrhages (blood in his eyes) similar to those observed on 12 October 2022.) (Id. at 24.)

concern for "non-accidental trauma." (Id. at 10-17.) She noted that her concern was heightened based on the presence of a bruise on O's back and his history of conjunctival hemorrhages. (Id. at 17; 24.) Consequently, the doctor ordered O's admission to the hospital so that a full skeletal exam and child and neglect evaluation could be conducted. (Id. at 3.)

The full medical examination revealed that O, then a three-month-old infant, had a total of 15 bone fractures, including fractures to several of his ribs, both femurs, left tibia, and clavicle. (Pros. Ex. 1 at 30-52.) Bruises were also observed on O's face, head, and back with swelling near O's collarbone and ribs. (Id.) Finally, hemorrhages were observed in O's eyes which, based on O's age, were indicative of either suffocation or blunt force trauma. (Id. at 33, 52.) Medical providers were also able to determine that several of these injuries had occurred at different times based on their respective healing stages. (Id. at 30.)

While at the hospital, Appellant attempted to explain the injury to O's collarbone. (Pros. Ex. 1 at 24.) He told the medical staff that he had tossed O into the air and almost did not catch O, which caused him to grab O's shoulder right before he hit the ground. (Id.) MS also attempted to explain some of the bruises on O's head. (Id.) Medical providers concluded that most of O's injuries were scientifically inconsistent with the explanations provided. (Id. at 32-33.) Based on O's age, immobile status, and other factors, providers were able to rule out the possibility that the injuries were accidental. (Id.)

During an interview with the Air Force Office of Special Investigations (OSI), Appellant finally admitted that he had caused O's injuries by squeezing him.[5] (Id. at 2-3, Attach. 6.) He

[5] Appellant initially maintained his story that he had innocently tossed O into the air and thought O's injuries were from being caught. (Pros. Ex. 1, Attach. 6.) After continued questioning and confrontation with medical findings, Appellant finally admitted to squeezing O against his chest one time in frustration. (Id.) When OSI pressed further, Appellant admitted to squeezing O on 3

stated that he had caused O to stop breathing, as discussed above, and described some other types of physical force he used on O. (Id.) Appellant also admitted that the fractures on O's legs were likely caused by Appellant forcefully yanking on O's legs to keep him from moving them while changing his diaper. (Id.) Appellant specifically admitted that he would "pull and yank on [O's] legs with an extreme amount of force with one hand while simultaneously pushing down with an extreme amount of force on [O's] upper pelvic area." (Id.) Appellant further acknowledged seeing the physical harm to O from his actions but agreed that he nevertheless continued harming O by squeezing him and using other force. (Id.) Finally, Appellant admitted that although he saw how he was harming O and knew it could kill or seriously injure him, he neglected to seek proper medical treatment for O or help for himself. (Id.)

On 7 July 2023, the convening authority referred the following charges against Appellant:

> Charge I, Article 80, U.C.M.J.[6]
>
> Specification: In that STAFF SERGEANT LIAM M. SHIRLEY, United States Air Force, 97th Air Refueling Squadron, Fairchild Air Force Base, Washington, did, at or near Spokane, Washington, between on or about 18 August 2022 and on or about 17 September 2022, on divers occasions, attempt to murder [O.S.] by means of squeezing [O.S.] until he became unconscious.
>
> Charge II, Article 128(b), U.C.M.J.[7]
>
> Specification 1: In that STAFF SERGEANT LIAM M. SHIRLEY, United States Air Force, 97th Air Refueling Squadron, Fairchild Air Force Base, Washington, did, at or near Spokane, Washington, between on or about 6 July 2022 and on or about 17 August 2022, on divers occasions, commit a violent offense against [O.S.], the

---

occasions, which progressed to 4, and eventually escalated to Appellant admitting that he had forcefully squeezed O almost every day or every other day since he was about a month old, approximating about 50 occasions. (Id.)

[6] 10 U.S.C. § 880(d)

[7] 10 U.S.C. § 928b

> immediate family member under the age of 16 years of the accused, to wit: assault [O.S.] by squeezing [O.S.] and did thereby inflict grievous bodily harm upon him to wit: a subconjunctival hemorrhage.
>
> Specification 2: In that STAFF SERGEANT LIAM M. SHIRLEY, United States Air Force, 97th Air Refueling Squadron, Fairchild Air Force Base, Washington, did, at or near Spokane, Washington, between on or about 18 August 2022 and on or about 14 October 2022, on divers occasions, commit a violent offense against [O.S.], the immediate family member under the age of 16 years of the accused, to wit: assault [O.S.] by squeezing [O.S.] and did thereby inflict grievous bodily harm upon him to wit: a fractured clavicle and fractured ribs.
>
> Specification 3: In that STAFF SERGEANT LIAM M. SHIRLEY, United States Air Force, 97th Air Refueling Squadron, Fairchild Air Force Base, Washington, did, at or near Spokane, Washington, between on or about 6 July 2022 and on or about 17 August 2022, on divers occasions, commit a violent offense against [O.S.], the immediate family member under the age of 16 years of the accused, to wit: pull [O.S.'s] legs and did thereby inflict grievous bodily harm upon him to wit: a fractured femur.

(*Charge Sheet*, ROT, Vol. 1.)

On 24 October 2023, Appellant submitted an offer to plead guilty to Charge II and its three specifications conditioned on the government's dismissal of Charge I and its specification. (App. Ex. III at 1-2, ROT, Vol. 2.) As a part of this offer, Appellant agreed to serve 60 total months of confinement and the mandatory adjudgment of a dishonorable discharge. (Id.) The convening authority accepted Appellant's offer and, accordingly, dismissed Charge I with prejudice. (Id. at 5; *Entry of Judgment*, ROT, Vol. 1; *Charge Sheet*, ROT, Vol. 1.)

I.

APPELLANT'S APPROVED SENTENCE IS NOT INAPPROPRIATE GIVEN HIS CRIMES AND THE TERMS OF HIS PLEA AGREEMENT.

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

Pursuant to Article 66(d), UCMJ, this Court "may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." 10 U.S.C. § 866(d). The purpose of such review is "to ensure 'that justice is done and that the accused gets the punishment he deserves.'" United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994) (quoting United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988)).

In assessing sentence appropriateness, this Court considers "the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial." United States v. Hamilton, 77 M.J. 579. 587 (A.F. Ct. Crim. App. 2017) (citations omitted). Although this Court has discretion to determine whether a sentence is appropriate, it has "no authority to 'grant mercy.'" Id. at 587 (citing United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010)); *see also* United States v. Walters, 71 M.J. 695, 698 (A.F. Ct. Crim. App. 2012) ("[W]e are not authorized to engage in exercises of clemency."). Thus, as long as a sentence is not inappropriately severe, this Court may affirm it even if it is not what this Court would have adjudged:

> By affirming a sentence, we do not necessarily mean that it is the sentence we would have adjudged had we been the sentencing

> authority. The numerous permutations and combinations of sentencing alternatives available to the sentencing authority are so broad that, normally, there will not be only one sentence that is appropriate for a particular appellant. Thus, it may be more fitting for this Court to find that a particular sentence "is not inappropriate," rather than "in appropriate."

Joyner, 39 M.J. at 966.

A military judge should generally only reject a plea agreement where the agreement: (1) contains a provision to which both parties do not agree; (2) contains a provision the accused does not understand; (3) where the agreed sentence is less than the mandatory minimum, if applicable; (4) is prohibited by law; or (5) is contrary to or inconsistent with a regulation prescribed by the president. *See* 10 U.S.C. § 853a. This section further provides in subsection (d) that, "[u]pon acceptance by the military judge of a general or special court-martial, an agreement shall bind the parties and the court-martial.

Absent a plea agreement, the total maximum confinement sentence for three specifications under Article 128b is 24 years, or 288 months when committed against a child under 16 causing grievous bodily harm. 10 U.S.C. § 928b. The maximum confinement authorized for attempted murder is a life term. 10 U.S.C. § 880(d); 10 U.S.C. § 918.

Analysis

Appellant argues that his sentence to 60 months of confinement was inappropriately severe due to: (1) his "personal growth" and rehabilitative efforts; (2) a lack of "lasting impact" on the victim; and (3) his lack of real benefit from the plea agreement. (App. Br. at 6-7.) All of these arguments fail to establish that this Court should find that Appellant's sentence is inappropriately severe.

While Appellant's argument alleges an inappropriately severe sentence, he does not claim that his confinement length was outside the authorized punishment for his crimes. Likewise, he

does not argue that the military judge abused his discretion in adjudging the confinement at issue. Instead, Appellant complains that he was sentenced in accordance with the plea agreement that *he* initiated, and into which he voluntarily entered. He does not provide any legal justification as to why the military judge should have rejected his plea agreement or why this Court should now question its terms. Nonetheless, urges this Court to simply "ignore" the terms of the agreement and reduce his sentence after he has already received the benefit of the plea. (App. Br. at 7.) This Court has said that "while [certain] matters are appropriate considerations in clemency, they do not show that [Appellant's] sentence is inappropriately severe." United States v. Aguilar, 70 M.J. 563, 567 (A.F. Ct. Crim. App. 2011). The entirety of this assignment of error amounts to nothing more than a request for clemency, which is not an authorized function of this Court. Nerad, 69 M.J. at 146.

Appellant's Personal Growth and Rehabilitative Efforts

First, Appellant seems to argue that his rehabilitation efforts should have had more influence in mitigating his sentence notwithstanding his preexisting agreement which specifically set his confinement length at 60 months. (App. Br. at 6-7.) In his Statement of Facts, Appellant claims "[h]e went on medication and went to couples counseling with [his spouse]" and "[h]e repeatedly asked for help from Family Advocacy, including domestic violence or anger management courses, but Family Advocacy was unhelpful." (App. Br. at 3, citing R. at 130–31.) While Appellant's efforts are not without value, none of these facts support his argument that his sentence was inappropriately severe.

For example, even in the absence of a plea agreement, attending couples counseling with MS and working on his marriage does not tend to mitigate the severity of his actions underlying his convictions; acts of violence against his helpless infant son, O. And Appellant's statements

about his unsuccessful efforts to obtain assistance through the Family Advocacy Program (FAP) similarly do nothing to support his argument that his confinement sentence is inappropriately severe. Assuming the allegation is true, a deficiency in FAP services *after* Appellant committed his crimes would not require a lesser sentence for his egregious conduct. Instead, these claims could arguably demonstrate that, even at the sentencing phase of his trial, Appellant attempted to deflect the trial court's attention from his own actions which would not have been helpful to him. Regardless of the above discussion, even if Appellant had presented compelling evidence of his rehabilitation efforts and other matters in mitigation, it would not have necessarily required a confinement term shorter than 60 months. It further would not have provided the lower court with any reason to reject any of the terms under the plea agreement nor does it provide this Court any basis to question its terms on appeal. 10 U.S.C. § 853a. *Victim Impact*

Next, Appellant's claim that "[t]he lack of victim impact sets this case apart" because Appellant's actions "left no lasting impact on O" is factually unsupported. O's bruises, swelling, eye hemorrhages, and at least *fifteen* bone fractures observed on his then-3-month-old body *are*, in fact, impact. This baby, completely dependent on his parents, cried in pain and did not want to be touched by them. (Prox. Ex. 1 at 24.) And that only addresses the *physical* injuries identified at the particular time he was examined. It is impossible to know the full extent of what O actually endured at the hands of his father. Further, Appellant cannot state with certainty that his actions did not permanently affect O or that O will not be affected in the future. To the contrary, the stipulated facts include a memorandum from Dr. A.H., a child abuse pediatrician, who opined:

> In addition to the injuries identified, there is potential for long-term complication related to the actions described in the forensic interview that may become apparent with time. It was described that there were multiple episodes of [O] losing consciousness as a result

> of squeezing his chest. Loss of consciousness in these episodes is most likely the result of disordered blood circulation involving the brain leading to oxygen deprivation and accumulation of cellular waste products. The brain and its cells are highly sensitive to such deprivation and cellular injury may reasonably have occurred. This may manifest in time as developmental delay, behavioral difficulties, and learning disorders.
>
> It should also be noted that the actions described had the potential to result in catastrophic injury to other vital organs of the body and even death.

(Pros. Ex. 1 at 51-52.)

Additionally, Appellant fails to consider that the impact from his actions extended far beyond O's direct injuries. Undoubtedly, those close to O, including his mother and grandparents, were also negatively affected. But all that aside, even if Appellant's assertion that there was no victim impact held merit, it would not render his confinement term inappropriately severe. This Court should not be persuaded by this argument.

Lack of Military Judge Discretion/Unfair Negotiation Strategy

Finally, Appellant's third point under this Assignment of Error claims that because of the plea agreement's sentencing parameters, the military judge had no "meaningful discretion in assessing a sentence." (App. Br. at 6; App. Ex. III.) He also adds that the government strategically charged Appellant with O's attempted murder, which was dismissed with prejudice at the acceptance of the plea offer, only to gain an unfair negotiation advantage. (App. Br. at 7.)

In response to the first point, Appellant has provided no evidence to support that the military judge's ability to exercise more discretion as to adjudged confinement would have benefitted Appellant. The military judge could have appropriately sentenced Appellant to 24 years of confinement – almost five times that adjudged – if he had not been bound by the plea agreement's limitations. Concerning the second point, Appellant specifically argues that "this

Court can read between the lines. The convening authority referred an attempted murder charge[], despite no probable cause for the offense, to build up an unassailable negotiating position." (App. Br. at 7.) He adds that because it was a "bad" or "unfavorable deal," the sentence is not appropriate. (R. at 7, citing Williams, 2024 CCA LEXIS 111, at *6.)

Appellant's assertion of "no probable cause" for the attempted murder charge refers to the report from the preliminary hearing. (App. Br. at 7; *Preliminary Hearing Officer Report*, ROT, Vol. 3.) This point hardly demonstrates government foul play. It should first be noted that a convening authority's decision to refer a charge notwithstanding the recommendation of *one* JAG sitting as a preliminary hearing officer is not unique to this case, as it is merely a recommendation for the convening authority's consideration. *See generally* 10 U.S.C. § 932Similarly, this one JAG's opinion did not establish a lack of probable cause as a matter of law. *See* United States v. Leedy, 65 M.J. 208 (C.A.A.F. 2007) (explaining that probable cause is not an exact or technical standard); (*Pretrial Advice*, dated 5 July 2023, ROT, Vol. 3 (stating the precise reasons for the SJA's disagreement with the PHO's probable cause analysis.)) Prior to a convening authority's decision whether to refer charges, the proposed charges and specifications undergo multiple layers of review by competent legal advisors bound by professional and ethical duties. (Id.) An accusation of bad faith by the government in its charging decision is a serious one, and in this case, is unwarranted.

If this were submitted to a trier of fact, the evidence would have shown that Appellant saw the physical harm to O, saw the pain O manifested, and acknowledged that squeezing O could have killed him. (Pros. Ex. 1, Attach. 6.) In fact, O lost consciousness on several occasions and only started breathing after resuscitation. (Id.) Still, Appellant never sought medical treatment for O, counseling or other services for himself, and did not refrain from being

alone with O. (Id.) Instead, Appellant continued to crush his infant and prevent O from breathing when he was alone with O and angry. (Id.) Thus, the evidence could have reasonably established that Appellant actually intended to kill his son or cause great bodily harm sufficient to sustain a conviction for attempted murder. *See* 10 USC §918(2). At a minimum, the evidence could have reasonably supported a conclusion that Appellant continuously engaged in behavior inherently dangerous to O, demonstrating a wanton disregard for human life. *See* 10 USC §918(3).

In sum, Appellant's plea agreement cannot be considered an "unfavorable" or "bad" deal. (App. Br. at 7.) The existence of a plea agreement is indicative of the reasonableness of Appellant's sentence. United States v. Fields, 74 M.J. 619, 625 (A.F. Ct. Crim. App 2015) (quoting United States v. Hendon, 6 M.J. 171, 175 (C.M.A. 1979) (holding an "accused's own sentence proposal is a reasonable justification of its probable fairness to him.")). Moreover, prior to his plea offer, he faced one charge and one specification of attempted murder under and one charge and three specifications of domestic violence. These charges exposed him to a possible confinement sentence for life. The government's dismissal of the attempted murder charge and its specification pursuant to the plea agreement evidences a fair bargaining process and a significant benefit received by Appellant. *See*, e.g., United States v. Arroyo. United States v. Arroyo, No. ACM 40321 (f rev), 2024 CCA LEXIS 242 (A.F. Ct. Crim. App. June 18, 2024) (unpub. op.).

Relevant Considerations for this Court

Even if Appellant's argument were supported by any facts, this Court should not be distracted in its analysis. In assessing sentence appropriateness, this Court should consider "the particular appellant, the nature and seriousness of the offense, the appellant's record of service,

and all matters contained in the record of trial." United States v. Hamilton, 77 M.J. 579. 587 (A.F. Ct. Crim. App. 2017) (citations omitted).

It is difficult to imagine many offenses as serious as Appellant's. The offense would have been serious even if he only committed it once. Here, Appellant squeezed his infant until he stopped breathing on *more than 50 occasions*, breaking O's bones, bruising him, and causing blood to appear in his eyes. Many times, the baby lost consciousness from a lack of oxygen and Appellant had to resuscitate O to prevent his death. Another time, Appellant actually heard and felt one of O's bones "pop" while squeezing him but acted as though nothing had happened. He did not seek proper medical care for O after this incident or on any of the 50 prior occasions that he hurt O. When O did receive medical treatment, Appellant lied to providers about what he had done. Then, Appellant subsequently lied to OSI about what caused O's injuries. Once Appellant finally acknowledged what he did to his baby, he told OSI that he knew that squeezing O could have crushed his organs, broken his bones, or killed him. But he did it anyway. He knew that he could not be trusted alone with his baby without hurting him out of "frustration," but never stopped watching O alone. It was only when scientific evidence brought the truth to light and O was removed from Appellant's care that he stopped abusing O.

Just as there is no excuse for Appellant's conduct, there is nothing that calls for a lesser punishment than what was ultimately adjudged. Appellant's sentence is not inappropriately severe given his crimes and is well-within the authorized range. Further, the adjudged sentence is consistent with the terms of his plea agreement. Thus, this Court should uphold the terms of the plea agreement Appellant made and decline to disturb his sentence.

II.

THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ.

Additional Facts

The Staff Judge Advocate's first indorsement to the Statement of Trial Results (STR) and EOJ in Appellant's case contains the following statements: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (*STR* and *EOJ*, ROT, Vol. 1.)

Standard of Review

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

Law and Analysis

The Gun Control Act of 1968 makes it unlawful for a person to possess a firearm if he has been, *inter alia*, "convicted in any court of a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). Appellant asserts that his convictions did not trigger the firearm prohibition under 18 U.S.C. § 922 and the Staff Judge Advocate's determination was erroneous. (App. Br. at 9-13). He also argues that any prohibitions on the possession of firearms imposed runs afoul of the Second Amendment, U.S. CONST. AMEND. II, citing to the Supreme Court's interpretation of that amendment in N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022). (Id.)

This Court recently held in its published opinion in United States v. Vanzant, No. ACM 22004, 2024 CCA LEXIS 215, __ M.J. __ (A.F. Ct. Crim. App. 28 May 2024), that 18 U.S.C. § 922(g)'s firearm prohibitions and the criminal indexing requirements that follow that statute are

collateral consequences of the conviction, rather than elements of the findings or sentence, so they are beyond the scope of this Court's jurisdiction under Article 66, UCMJ. Id. at *24. First, the Vanzant opinion was clear as to the scope of its jurisdiction under Article 66, UCMJ, and none of the cases cited by Appellant support his position that this Court has the authority to amend post-trial documents beyond correcting clerical errors related to the findings or sentence. *See*, e.g., United States v. Jones, No. ACM S32717, 2022 CCA LEXIS 652, at *4 (A.F. Ct. Crim. App. 7 Nov. 2022); United States v. Graves, No. ACM 40340, 2023 CCA LEXIS 356, at *8-9 (A.F. Ct. Crim. App. 23 Aug. 2023). (App. Br. at 9-10.)

Next, Appellant is not entitled to relief under Article 66(d)(2), UCMJ. A CCA "***may*** provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial ***after*** the judgment was entered into the record under section 860c of this title[.]" (emphasis added).

The 18 U.S.C. § 922 annotation was entered into the record before the EOJ was entered into the record. The 18 U.S.C. § 922 annotation on the First Indorsement of the STR is attached to the STR as "other information" under R.C.M. 1101(a)(6), and then both the other information and the STR are entered into the record. 10 U.S.C. § 8Article 60(1)(C). Then the EOJ is entered into the record – after the STR. The EOJ is "the judgment of the court" cited in Article 66(d)(2). *Compare* Article 66 *with* Article 60c. Because the STR and the First Indorsement are entered into the record before the EOJ is entered into the record under Article 60c, the § 922 annotation on the STR's First Indorsement is not an error occurring "*after* the judgment was entered into the record." Article 66(d)(2) (emphasis added).

Then the STR and its First Indorsement are entered into the record again as attachments to the EOJ. Article 60c (a)(1)(A). Because they are entered again as attachments to the EOJ they

are simultaneous with the judgment of the court. The STR and the STR's First Indorsement are not errors occurring after the judgment was entered into the record.

Appellant suggests that this Court could correct the First Indorsement to the EOJ because it is attached to the EOJ after the military judge signs it. (App. Br. at 13-14); DAFI 51-201, para. 20.41. ("After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement.") But a correction to the EOJ's First Indorsement would be a pyrrhic victory. Even if this Court had authority to remove the firearms prohibition annotation from the First Indorsement to EOJ (*Entry of Judgment*, ROT Vol. 1 at 3), it could not remove the firearms annotation from the STR that was incorporated into the EOJ (*Entry of Judgment*, ROT, Vol. 1, Attach. at 3) because that annotation on the STR occurred before the EOJ was entered into the record. Thus, Appellant would remain in the same situation he is in now – having a firearms prohibition annotated on the EOJ. Since this Court's intervention under Article 66(d)(2) would not provide meaningful relief, this Court should deny Appellant's claim.

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.

[redacted]
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 27 February 2025.

[redacted]
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S REPLY BRIEF**
v.	)	Before Panel No. 2
Staff Sergeant (E-5) **LIAM M. SHIRLEY,** United States Air Force, *Appellant.*	)	No. ACM 40618
	)	5 March 2025

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

Appellant, Staff Sergeant (SSgt) Liam M. Shirley, pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this Reply to the Appellee's Answer, dated 27 February 2025 (Ans.). In addition to his opening brief, filed on 29 January 2025 (App. Br.), SSgt Shirley submits the following arguments.

I.

Staff Sergeant Shirley's sentence is inappropriately severe.

SSgt Shirley asked this Court to consider whether his sentence is inappropriately severe in light of: (1) his demonstrated rehabilitation potential; (2) the absence of long-term victim impact; and (3) the fact that the sentence was essentially mandatory under the plea agreement, meaning the military judge could not consider these matters. The briefs show a basic disconnect between SSgt Shirley and the Government. The Government asks this Court to use the plea agreement as a yardstick to measure sentence appropriateness, while SSgt Shirley asks this Court to utilize its full sentence appropriateness power under Article 66, UCMJ, 10 U.S.C. § 866(d), in order to find the sentence inappropriately severe. The Government calls

this a mere act of clemency, yet ensuring a sentence is not inappropriately severe is a core Article 66, UCMJ, function.

The Government highlights a number of supposed deficiencies with the assignment of error. It notes that SSgt Shirley "does not claim that his confinement length was outside the authorized punishment for his crimes." (Ans. at 8.) True, but that would not be a sentence appropriateness claim, that would be a sentence incorrect in law. It claims that SSgt Shirley "does not argue that the military judge abused his discretion in adjudging the confinement at issue." (Ans. at 8–9.) True, but irrelevant. This Court's review is de novo. (Ans. at 7 (citing *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006)).) The Government blends a separate legal question into its appropriateness argument, giving weight to the distinguishable claim that SSgt Shirley "does not provide any legal justification as to why the military judge should have rejected his plea agreement or why this Court should now question its terms." (Ans. at 9.) Also true, but *legal* justifications are not required for sentence appropriateness review. What SSgt Shirley asks for is not clemency, only a determination that his sentence is inappropriately severe "in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial." *United States v. Gladue*, 65 M.J. 903, 906 (A.F. Ct. Crim. App. 2008), *aff'd*, 67 M.J. 311 (C.A.A.F. 2009).

One focus in the opening brief was SSgt Shirley's demonstrable rehabilitation potential. The Government seems dismissive of the entire concept of rehabilitation potential, claiming that his efforts after the misconduct do not bear on the sentence's

appropriateness. It is unclear why. Rehabilitation is a classic aspect of sentencing. *See* Article 56(c)(1)(C)(vi), UCMJ, 10 U.S.C. § 856(c)(1)(C)(vi). The Government ignores it, but this Court should not.

SSgt Shirley's next focus was on the lack of long-term impact upon O. He began his argument by recognizing the gravity of his offenses. (App. Br. at 7.) Still, the lack of lasting impact matters. The Government responds with a child abuse pediatrician's comment, included in the stipulation of fact, that it is possible there could be long-term damage. (Ans. at 10–11 (citing Pros. Ex. 1 at 51–52).) Yet the clear testimony from SSgt Shirley's wife was that O was happy and healthy. (R. at 123.) And on the topic of lasting impact upon others, the Government claims the SSgt Shirley's wife and her parents were certainly affected, perhaps forgetting that they all testified in support of SSgt Shirley. (Ans. at 11.)

SSgt Shirley's third point was that the military judge lacked discretion to adjudge an appropriate sentence, but that this Court has greater power. The Government counters that there is no evidence the military judge would have adjudged a lower sentence. (Ans. at 11.) Again, this is an irrelevant consideration in a de novo review of sentence appropriateness.

Finally, the Government urges this Court to consider the dismissed offense of attempted murder when assessing sentence appropriateness, inviting this Court into potential error. It downplays the no-probable-cause determination of the sitting chief reserve military judge—"this one JAG"—while urging the viability of that charge. (Ans. at 12–13.) It then argues that "the government's dismissal of the attempted

murder charge and its specification pursuant to the plea agreement evidences a fair bargaining process and a significant benefit received by Appellant." (Ans. at 13 (citing *United States v. Arroyo*, No. ACM 40321 (f rev), 2024 CCA LEXIS 242 (A.F. Ct. Crim. App. 18 June 2024)).) The Government fails to acknowledge that the Court of Appeals for the Armed Forces granted review of *Arroyo* on this very point and heard oral argument two days before the Government filed its brief. *United States v. Arroyo*, __ M.J. __, 2024 CAAF LEXIS 592 (C.A.A.F. 7 Oct. 2024) (order granting review).

SSgt Shirley received a sentence exactly as prescribed in his plea agreement. But that does not make it appropriate. This Court should provide relief for his inappropriately severe sentence.

WHEREFORE, SSgt Shirley respectfully requests this Honorable Court approve no more than three years' confinement.

Respectfully submitted,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 5 March 2025.

[redacted]
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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40618**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Liam M. SHIRLEY	)	**PANEL CHANGE**
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 6th day of May, 2025,

ORDERED:

The record of trial in the above styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

RICHARDSON, NATALIE D., Colonel, Senior Appellate Military Judge
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

Chief Commissioner