UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40485 (f rev)**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF DOCKETING**
Aaron R. WILLIAMS II	)	
Airman (E-2)	)	
U.S. Air Force	)	
Appellant	)	

The record of trial in the above-styled case was returned to this court on 6 September 2024 by the Military Appellate Records Branch (JAJM) for re-docketing with the court.

Accordingly, it is by the court on this 9th day of September 2024,

ORDERED:

The above-styled case is referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Special Panel
Airman (E-2) **AARON R. WILLIAMS II,** United States Air Force *Appellant*	)	No. ACM 40485 (f rev) 25 October 2024

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file any additional Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **7 January 2025**. The record of trial was returned to this Court on 6 September and re-docketed with this Court on 9 September 2024. From the date this case was re-docketed to the present date, 46 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[redacted]

NICOLE J. HERBERS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
(240) 612-4770
nicole.herbers@us.af.mil

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 25 October 2024.

[redacted]

NICOLE J. HERBERS, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
(240) 612-4770
nicole.herbers@us.af.mil

25 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman (E-2) AARON R. WILLIAMS II, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40485 (f rev) Before a Special Panel

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]
JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
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 October 2024.

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Airman (E-2), **AARON R. WILLIAMS II,** United States Air Force, *Appellant*.	**BRIEF ON BEHALF OF APPELLANT** Before Panel No. 3 No. ACM 40485 4 March 2024

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

ASSIGNMENTS OF ERROR[1]

I.

WHETHER THE GOVERNMENT CAN PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL EVEN THOUGH ITS APPLICATION IS NOT CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION WHEN AIRMAN WILLIAMS WAS CONVICTED OF A NON-VIOLENT OFFENSE AND THIS COURT CAN DECIDE THAT QUESTION.

II.

WHETHER A PLEA AGREEMENT REQUIRING A DISHONORABLE DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THUS VIOLATES PUBLIC POLICY.

III.

WHETHER AIRMAN WILLIAMS' SENTENCE IS INAPPROPRIATELY SEVERE.

STATEMENT OF THE CASE

On 2 February 2023, Airman (Amn) Aaron Williams was tried by a general court-martial at Minot Air Force Base (AFB), North Dakota. In accordance with his pleas, the military judge found Amn Williams guilty of one charge with three specifications of possession, distribution, and

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

viewing child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.[2] The military judge sentenced Amn Williams to be reduced to the grade of E-1, to be confined for 18 months, and to be discharged from the service with a dishonorable discharge.[3] The convening authority took no action on the findings or the sentence.[4]

STATEMENT OF FACTS

Amn Williams had a difficult and traumatizing childhood.[5] His mother and father divorced soon after Amn Williams was born.[6] In the beginning of his life, he spent most of his time with his mother.[7] She suffered from severe mental health issues that resulted in her neglecting Amn Williams and his siblings.[8] The home they lived in was always full of trash and animal feces.[9] Amn Williams' mother would verbally, emotionally, and physically abuse him.[10] It was not until a Court deemed his mother unfit to care for him and his siblings, and his father and stepmother secured custody of them, that Amn Williams was able to escape this abuse.[11]

Unfortunately, the trauma for Amn Williams did not stop there. After Amn Williams enlisted in the Air Force in February 2020, and while he was at technical school, his 25-year-old sister was involved in a tragic car accident.[12] His sister's death "crushed [him]" and he characterized it as the "worst time of [his] life."[13] The grief he experienced was only exacerbated

---

[2] R. at 10-11, 93; Entry of Judgment (EOJ), 23 March 2023.
[3] R. at 116.
[4] Convening Authority Decision on Action – *United States v. Amn Aaron R. Williams II*, 16 March 2023.
[5] Def. Ex. C at 1.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.* at 1-2.
[13] *Id.* at 2.

by the extreme isolation and loneliness that accompanied the COVID-19 pandemic.[14] Amn Williams arrived at his first duty assignment—Minot AFB—without any friends and without a way to go out locally to build a community.[15] The grief and isolation resulted in Amn Williams turning to explicit content online.[16] He downloaded the Kik Messenger application in an effort to try to socialize with people and get out of his depression.[17] However, he ended up in inappropriate chat rooms as a way to escape reality and isolation.[18]

In April 2021, the Office of Special Investigations (OSI) initiated an investigation into Amn Williams for offenses involving child pornography.[19] On 16 April 2021, Amn Williams fully cooperated with OSI in the investigation by participating in an interview with investigators and voluntarily providing OSI with information about the charged offenses.[20]

In 2022, Amn Williams sought counseling.[21] He was diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), autism, and depression.[22]

Amn Williams entered into a plea agreement with the convening authority.[23] The plea agreement required the military judge to adjudge a dishonorable discharge, and confinement between 12 months and 18 months for each specification, with the confinement to run concurrently.[24] The plea agreement states that if any provision of the agreement is held illegal or unenforceable in a judicial proceeding, "such provision shall be severed and shall be inoperative,

[14] Def. Ex. C at 2.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Pros. Ex. 1 at 1-2.
[20] *Id.* at 1, ¶ 10.
[21] Def. Ex. C at 2.
[22] *Id.*
[23] App. Ex. II.
[24] App. Ex. II at 2, ¶ 2.a.i-v.

and the remainder of [the plea agreement] shall remain operative and binding."[25]

Amn Williams pleaded guilty at his court-martial to three specifications of possession, distributing, and viewing of child pornography.[26] He admitted that between 1 September 2020 and 20 March 2021, he downloaded to his personal electronic devices 28 files of child pornography.[27] He also admitted that between 1 September 2020 and 20 March 2021, he distributed images of child pornography to other users on the Kik Messenger application at least once or twice per week for the few months prior to his OSI investigation.[28] Finally, he admitted that between 1 September 2020 and 20 March 2021, he viewed three files of child pornography.[29] Amn Williams submitted a written unsworn statement to the Court, in which he accepted full responsibility for his actions.[30] The military judge sentenced Amn Williams to be reduced to the grade of E-1, to be confined for 18 months, and to be discharged from the service with a dishonorable discharge. [31]

After his conviction, the Government made the determination that Amn Williams' case met the firearm prohibition under 18 U.S.C. § 922, as reflected in the Statement of Trial Results and the Entry of Judgement.[32] The Government did not specify why, or under which section, his case met the requirements of 18 U.S.C. § 922.[33]

---

[25] App. Ex. II at 3, ¶ 10.
[26] R. at 10-11; EOJ.
[27] Pros. Ex. 1 at 3, ¶ 13; R. at 24-25.
[28] R. at 41.
[29] R. at 57. Amn Williams was not charged with, nor did he plead guilty to, wrongful possession of the three files containing child pornography that he viewed. Pros. Ex. 1 at 3-4 ¶ 15, 21.
[30] Def. Ex. C at 2, 3.
[31] R. at 116.
[32] Statement of Trial Results (STR), dated 3 February 2023; EOJ.
[33] *Id.*

ARGUMENT

I.

THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL BECAUSE ITS APPLICATION IS NOT CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION WHEN AIRMAN WILLIAMS WAS CONVICTED OF A NON-VIOLENT OFFENSE AND THIS COURT CAN DECIDE THAT QUESTION.

Standard of Review

This Court reviews questions of jurisdiction, law, and statutory interpretation *de novo*.[34]

Law and Analysis

The test for applying the Second Amendment is:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."[35]

In applying this test, the Fifth Circuit held that "§ 922(g)(8)'s ban on possession of firearms is an 'outlier[] that our ancestors would never have accepted.' Therefore, the statute is unconstitutional, and Rahimi's conviction under that statute must be vacated."[36] Notably, Rahimi was "involved in five shootings" and pled guilty to "possessing a firearm while under a domestic violence restraining order."[37] Rahimi agreed to this domestic violence restraining order.[38]

---

[34] *United States v. Lepore*, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).
[35] *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022) (citation omitted).
[36] *United States v. Rahimi*, 61 F.4th 443, 461 (5th Cir. 2023), *cert granted*, __ U.S.__, 2023 U.S. LEXIS 2830 (30 June 2023) (citation omitted).
[37] *Id.* at 448.
[38] *Id.* at 452.

The Fifth Circuit made three broad points. First, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct."[39] Therefore, the Government bears the burden of justifying its regulation "by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation."[40]

Second, the Fifth Circuit recognized that *D.C. v. Heller*, 554 U.S. 570 (2008), and *Bruen* both contain language that could limit the Second Amendment's application to "law-abiding, responsible citizens."[41] The Fifth Circuit explained that "*Heller*'s reference to 'law-abiding, responsible' citizens meant to exclude from the Court's discussion groups that have historically been stripped of their Second Amendment rights, i.e., groups whose disarmament the Founders 'presumptively' tolerated or would have tolerated."[42] Here the issue is whether the Founders would have "presumptively" tolerated a citizen being stripped of his right to keep and bear arms after being convicted for a non-violent offense.[43]

Third, the Fifth Circuit held that "[t]he Government fails to demonstrate that § 922(g)(8)'s restriction of the Second Amendment right fits within our Nation's historical tradition of firearm regulation."[44] If the Government failed to prove that our Nation's historical tradition of firearm regulation did not include a violent offender who pled guilty to possessing a firearm while under an agreed-upon domestic violence restraining order, then it likely cannot prove that its firearm prohibition on Amn Williams for a non-violent offense[45] would be constitutional.

---

[39] *Id.* at 461 (quoting *Bruen*, 597 U.S. at 17).
[40] *Id*.
[41] *Id.* at 451.
[42] *Id.* at 452.
[43] *See id.*
[44] *Id*. at 460.
[45] Possession, distribution, and viewing of child pornography is a non-violent offense. The Federal Bureau of Investigation (FBI) Uniform Crime Reporting (UCR) Program defines a violent crime as those offenses that involve force or threat of force, specifically murder and nonnegligent

A further problem with the STR and EOJ is that the Government did not indicate which specific subsection of § 922 it relied on to find that Amn Williams fell under the firearm prohibition. Notably, the Court did not convict him of an offense relating to him being "an unlawful user of or addicted to any controlled substance."[46] Thus, Amn Williams is unable to argue which specific subsection of § 922 is unconstitutional in his case, although he knows it would not be the domestic violence or drugs section given the facts of his case. Regardless, given *Rahimi*'s holding, it appears that the Government would not be able to meet its burden of proving a historical analog that barred non-violent offenders from possessing firearms.

Not only does the purported firearms prohibition in this case contravene Amn Williams' rights under the Constitution, but it is an error that this Court can--and should--correct. In *Lepore*, citing to the 2016 edition of the Rules for Courts-Martial (R.C.M.), this Court held, "the mere fact that a firearms prohibition annotation, not required by the Rules for Courts-Martial, was recorded on a document that is itself required by the [R.C.M.] is not sufficient to bring the matter within our limited authority under Article 66, UCMJ."[47] Despite the court-martial order erroneously identifying that A1C Lepore fell under the firearms prohibition, this Court did not act because the "correction relates to a collateral matter and is beyond the scope of our authority under Article 66."[48] However, this Court emphasized, "To be clear, we do not hold that this court lacks authority to direct correction of errors in a promulgating order with respect to the findings, sentence, or action of the convening authority."[49]

---

manslaughter, rape, robbery, and aggravated assault. FBI UCR Violent Crime Definition, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/violent-crime#:~:text=Definition,force%20or%20threat%20of%20force (visited 1 Mar. 2024).

[46] 18 U.S.C. § 922(g)(3).

[47] 81 M.J. at 763.

[48] *Id.* at 760.

[49] *Id.*

Six months after this Court's decision in *Lepore*, the Court of Appeals for the Armed Forces (CAAF) decided *United States v. Lemire*.[50] In that decision, the CAAF granted Sergeant Lemire's petition, affirmed the Army Court of Criminal Appeals (ACCA) decision, and "directed that the promulgating order be corrected to delete the requirement that Appellant register as a sex offender."[51] The CAAF's direction that the ACCA fix—or order the Government to fix—the promulgating order, is at odds with this Court's holding in *Lepore*.

The CAAF's decision in *Lemire* reveals three things: First, the CAAF has the power to order the correction of administrative errors in promulgating orders—even via unpublished decisions regardless of whether the initial requirement was a collateral consequence. Second, the CAAF believes that Courts of Criminal Appeals (CCAs) have the power to address collateral consequences under Article 66 as well since it "directed" the ACCA to fix—or have fixed—the erroneous requirement that Sergeant Lemire register as a sex offender. Third, if the CAAF and the CCAs have the power to fix administrative errors under Article 66 as they relate to collateral consequences, then perforce, they also have the power to address constitutional errors in promulgating orders even if the court deems them to be a collateral consequence.

Additionally, *Lepore* is distinguishable from this case. In *Lepore*, this Court made clear that "[a]ll references in this opinion to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2016 ed.)."[52] This Court then emphasized "the mere fact that a firearms prohibition annotation, *not required by the Rules for Courts-Martial*, was recorded on a document that is itself required by the Rules for Courts-Martial is not sufficient to

[50] 82 M.J. 263 (C.A.A.F. 2022).
[51] *Id.* at n*.
[52] 81 M.J. at 760 n.1.

bring the matter within our limited authority under Article 66, UCMJ."[53] The 2019 R.C.M., however, contain language that both the Statement of Trial Results and the Entry of Judgment contain "[a]ny additional information . . . required under regulations prescribed by the Secretary concerned."[54] At the time Amn Williams' STR was signed, paragraph 13.3 of the Department of the Air Force Instruction 51-201, *Administration of Military Justice*, dated 8 April 2022, required the Statement of Trial results to include "whether the following criteria are met . . . firearm prohibitions." As such, this Court's analysis in *Lepore* is no longer controlling since the R.C.M. now requires—by incorporation—a determination on whether the firearm prohibition is triggered. Even if this Court does not find this argument persuasive, it still should consider the issue under *Lepore* since this issue is not an administrative fixing of paperwork, but an issue of constitutional magnitude.

WHEREFORE, Amn Williams requests this Court find the Government's firearm prohibition is unconstitutional, and order that the Government correct the STR and EOJ.

Respectfully submitted,

[redacted]

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
U.S.C.A.A.F. Bar No. 37146
Appellate Defense Division, AF/JAJA
1500 W. Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
Megan.crouch.1@us.af.mil

Counsel for Appellant

[53] *Id.* at 763 (emphasis added).
[54] R.C.M. 1101(a)(6), 1111(b)(3)(F).

APPENDIX

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

II.

A PLEA AGREEMENT REQUIRING A DISHONORABLE DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THUS VIOLATES PUBLIC POLICY.

Standard of Review

Whether a condition of a plea agreement violates R.C.M. 705(c)(1)(B) is a question of law that this Court reviews *de novo*.[55]

Law

An accused may enter into a plea agreement with the convening authority.[56] The agreement may require an accused or the convening authority to fulfill promises or conditions unless barred by the Rule.[57] A plea agreement may contain a provision for a maximum punishment, a minimum punishment, or both.[58]

Court-martial sentences must be individualized; they must be appropriate to the offender and the offense.[59] 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."[60]

---

[55] *See United States v. Tate*, 64 M.J. 269, 271 (C.A.A.F. 2007). Amn Williams' case implicates R.C.M. 705 from the 2019 *Manual of Courts-Martial*. However, the body of law on the plea agreement's predecessor, the pretrial agreement, is still applicable, as this Court has recognized. *See, e.g.*, *United States v. Marable*, 2021 CCA LEXIS 662, at *10 (A.F. Ct. Crim. App. 10 Dec. 2021) ("We find our superior court's precedent with respect to [pretrial agreements] instructive when interpreting plea agreements.").
[56] R.C.M. 705(a).
[57] R.C.M. 705(b), (c).
[58] R.C.M. 705(d)(1).
[59] *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).
[60] Article 56(c)(1), UCMJ, 10 U.S.C. § 856(c)(1); R.C.M. 1002(f).

Congress has established mandatory minimum sentences for violations of certain punitive articles under the Code; Article 134 is not among them.[61]

Terms in a plea agreement cannot be contrary to public policy.[62] Pretrial agreement provisions are contrary to public policy if they "interfere with court-martial fact-finding, sentencing, or review functions or undermine public confidence in the integrity and fairness of the disciplinary process."[63] "To the extent that a term in a pretrial agreement violates public policy, it will be stricken from the pretrial agreement and not enforced."[64]

"A fundamental principle underlying [the CAAF's] jurisprudence on pretrial agreements is that 'the agreement cannot transform the trial into an empty ritual.'"[65] It is the military judge's "responsibility to police the terms of pretrial agreements to insure compliance with statutory and decisional law as well as adherence to basic notions of fundamental fairness."[66]

This Court recently held, in an unpublished opinion for *United States v. Reedy*, that plea agreement terms requiring a minimum dishonorable discharge do not violate law or public policy.[67] However, various other CCAs have struck down provisions in an agreement as violating public policy.[68] In *United States v. Libecap*, the Coast Guard Court of Criminal Appeals (CGCCA)

---

[61] Article 56(b), UCMJ, 10 U.S.C. § 856(c).
[62] R.C.M. 705(e)(1).
[63] *See United States v. Raynor*, 66 M.J. 693, 697 (A.F. Ct. Crim. App. 2008) (citing *United States v. Cassity*, 36 M.J. 759, 762 (N.M.C.M.R. 1992)).
[64] *United States v. Edwards*, 58 M.J. 49, 52 (C.A.A.F. 2003) (citing *United States v. Clark*, 53 M.J. 280, 283 (C.A.A.F. 2000); R.C.M. 705(c)(1)(B) (2002)).
[65] *United States v. Davis*, 50 M.J. 426, 429 (C.A.A.F. 1999) (citing *United States v. Allen*, 25 C.M.R. 8, 11 (C.M.A. 1957)).
[66] *United States v. Partin*, 7 M.J. 409, 412 (C.M.A. 1979) (citation omitted).
[67] *United States v. Reedy*, 2024 CCA LEXIS 40, at *14 (A.F. Ct. Crim. App. 2 Feb. 2024).
[68] *See*, e.g., *Cassity*, 36 M.J. at 765 (holding a sentencing limitation promising the convening authority would only suspend a punitive discharge if more than four months confinement was adjudged at trial violated public policy and the military judge erred by not striking it from the agreement).

addressed a pretrial agreement that required the accused to request a punitive discharge.[69] The CGCCA wrote that "whether or not to impose a punitive discharge as a part of the sentence in a court-martial is always a significant sentencing issue, and often is the most strenuously contested sentencing issue."[70] While the provision at issue still allowed the presentation of a complete presentencing case, the CGCCA believed the request for a bad-conduct discharge undercut any presentation. The court wrote:

> [W]e are convinced that although such a sentencing proceeding might in some sense be viewed as complete, the requirement to request a bad conduct discharge would, in too many instances, largely negate the value of putting on a defense sentencing case, and create the impression, if not the reality, of a proceeding that was little more than an empty ritual, at least with respect to the question of whether a punitive discharge should be imposed. Therefore, we conclude that such a requirement may, as a practical matter, deprive the accused of a complete sentencing proceeding.[71]

It reasoned that the Government had placed the appellant in a position where he would either be forced to forego a desirable deal or sacrifice a complete presentencing hearing.[72] For these reasons, the term violated public policy because the public would lose confidence in the integrity and fairness of the appellant's court-martial.[73]

Analysis

The mandatory dishonorable discharge provision of Amn Williams' plea agreement is contrary to public policy, and this Honorable Court should not enforce it. The term rendered the

[69] 57 M.J. 611, 615 (C.G. Ct. Crim. App. 2002).
[70] *Id.* at 615.
[71] *Id.* at 615–16.
[72] *Id.*
[73] *Id.*

presentencing proceeding an empty ritual and deprived Amn Williams of his opportunity to secure a fair and just sentence.

At least one sister-service CCA found a provision requiring an accused to request a punitive discharge offended due process by curtailing complete presentencing proceedings.[74] Such a mandatory request for punitive discharge "seriously undercut" any effort to avoid a punitive discharge.[75] Requiring the request for a punitive discharge, like the mandatory punitive discharge here, "create[s] the impression, if not the reality, of a proceeding that was little more than an empty ritual, at least with respect to the question of whether a punitive discharge should be imposed."[76] This presentencing session was, for all intents and purposes, the empty ritual prohibited by *Allen*, *Davis*, and their progeny.[77] If it violates public policy to require requesting a punitive discharge, surely it violates public policy to mandate the result.[78]

Congress passed Article 56(c)(1), UCMJ, to expressly mandate, "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," which supports this concept of individualized sentencing.[79] If a court-martial shall impose punishment that is sufficient, but not greater than necessary, to achieve the principles of sentencing, it runs afoul of public policy to preclude the sentencing authority from determining what is sufficient, but not greater than necessary, to achieve the principles of sentencing.

---

[74] *Libecap*, 57 M.J. at 615–16.
[75] *Id.* at 615.
[76] *Id.* at 616.
[77] 25 C.M.R. at 11; 50 M.J. at 429.
[78] But *see United States v. Geier*, No. ACM S32679 (f rev), 2022 CCA LEXIS 468, at *11– 12 (A.F. Ct. Crim. App. 2 Aug. 2022) and *United States v. Reedy*, 2024 CCA LEXIS 40, at *14 (A.F. Ct. Crim. App. 2 Feb. 2024) (rejecting this argument).
[79] *Snelling*, 14 M.J. at 268.

It is unknown whether the military judge believed a dishonorable discharge was "not greater than necessary." This Court should find that a term that prevents the sentencing authority from adjudging—in its sole discretion—a punishment that is sufficient, but not greater than necessary, violates public policy and is inconsistent with the mandate of Article 56(c)(1), UCMJ.

WHEREFORE, Amn Williams requests this Honorable Court sever the term for the mandatory dishonorable discharge and uphold the remainder of the plea agreement.

III.

AIRMAN WILLIAMS' SENTENCE IS INAPPROPRIATELY SEVERE.

Standard of Review

This Court reviews sentence appropriateness *de novo*.[80]

Law

This Court "may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as [it] finds correct in law and fact and determines, on the basis of the entire record, should be approved."[81] 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."[82] "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

[80] *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).
[81] Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2019).
[82] *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (citations omitted).

[UCMJ]."[83] This Court's role in reviewing sentences under Article 66(d) is to "do justice," as distinguished from the discretionary power of the convening authority to grant mercy.[84]

A sister-service CCA has used this sentence appropriateness power under Article 66, UCMJ, to determine that even plea agreements which mandate a specific punitive discharge as part of the punishment may result in inappropriately severe punishments. In *United States v. Kerr*, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) concluded that the portion of the appellant's sentence that included a bad-conduct discharge was inappropriately severe and inappropriate "because of the matters presented in extenuation and mitigation,"[85] and set aside the bad-conduct discharge.[86] Although the plea agreement "required the military judge to adjudge a bad-conduct discharge,"[87] the Court concluded that the military judge "could have, and should have, simply rejected the plea agreement in its entirety."[88]

Analysis

The task of the sentencing authority is to adjudge a sentence for the offense and the offender. Taking into consideration the facts surrounding the charged offenses, Amn Williams' life experiences, his cooperation with the OSI investigation, and his acceptance of complete responsibility, Amn Williams' dishonorable discharge is inappropriately severe.

Amn Williams' troubling and traumatizing childhood had a serious impact on his health and wellbeing. He experienced parental divorce at a very young age, and was then raised in a unhealthy household where he suffered verbal, emotional, and physical abuse at the hands of his

---

[83] *United States v. Hutchison*, 57 M.J. 231, 233 (C.A.A.F. 2002) (citations omitted).
[84] *See United States v. Boone*, 49 M.J. 187, 192 (C.A.A.F. 1998).
[85] *United States v. Kerr*, No. 202200140, 2023 CCA LEXIS 434, at *8 (N-M Ct. Crim. App. 17 Oct. 2023).
[86] *Id.* at *9.
[87] *Id.* at *8, n.23.
[88] *Id.* at *8.

own mother.[89] He lost his sister in a tragic car accident while he was at technical school, and then he was isolated by the COVID-19 pandemic, only to stumble through his grief without any family or friends nearby to support him.[90] At the time, he did not know he was suffering from ADHD, autism, and depression.[91] It was this grief, isolation, and a desire to escape reality, that drove him to seek out explicit content online during the "worst time of [his] life."[92]

Nevertheless, Amn Williams fully cooperated with the OSI investigation into his conduct, participating in an interview with investigators and voluntarily providing OSI with information about the charged offenses.[93] He pleaded guilty at his court-martial to all the offenses charged against him, explained to the court-marital how and why he was guilty of the offenses, and accepted full responsibility for his actions.[94] He also sought out counseling to address his problem.[95]

The number of files containing child pornography offered by the Government as part of the Stipulation of Fact totaled 31 files.[96] Amn Williams admitted that over the course of the charged time frame, he possessed a total of 28 files of child pornography, he viewed three files of child pornography, and he distributed at least two of the files of child pornography (of the 28 files that he possessed).[97] This is not thousands, or even hundreds, of files containing child pornography—the evidence presented at trial was 31 files.

This low number of files of which Amn Williams interacted with does not warrant a

---

[89] Def. Ex. C at 1.
[90] *Id*. at 2.
[91] *Id.*
[92] *Id.*
[93] Pros. Ex. 1 at 1, ¶ 10.
[94] R. at 10-11, 23-37, 41-55, 57-66; Def. Ex. C at 2-3.
[95] Def. Ex. C at 2.
[96] Pros. Ex. 1 at Atch 1.
[97] R. at 24-25, 41, 57.

dishonorable discharge. When taken into consideration with Amn Williams' life experiences, his cooperation with OSI, his cost-saving to the Government by entering into a plea agreement and pleading guilty to the charged offenses, and his acceptance of responsibility for his actions, the dishonorable discharge in inappropriately severe. Similar to *Kerr*, the military judge in Amn Williams' case "could have, and should have, simply rejected" the portion the plea agreement that mandated a dishonorable discharge as part of the adjudged sentence by the court-martial. The plea agreement even allowed for this circumstance by including language that would allow for illegal or unenforceable provisions to be "severed and shall be inoperative, and the remainder of [the plea agreement] shall remain operative and binding."[98]

Oftentimes with plea agreements, minimum and maximum punishments are the same, and "the role of trial judges (and appellate judges) as ultimate assessors of the sentence appropriateness has become all the more important."[99] This Honorable Court should exercise its authority under Article 66, UCMJ, and disapprove the dishonorable discharge as inappropriately severe, while leaving the remainder of the plea agreement operative and binding.[100]

WHEREFORE, Amn Williams respectfully requests this Honorable Court disapprove his dishonorable discharge.

[98] App. Ex. II at 3, ¶ 10.
[99] *Kerr*, 2023 CCA LEXIS 434, at *8.
[100] Pursuant to paragraph 10 of the plea agreement. App. Ex. II at 3, ¶ 10.

Certificate of Filing and Service

I certify that an electronic copy of the foregoing was electronically sent to the Court and served on the Air Force Government Trial and Appellate Operations Division on March 4, 2024.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
U.S.C.A.A.F. Bar No. 37146
Appellate Defense Division, AF/JAJA
1500 W. Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
Megan.crouch.1@us.af.mil

Counsel for Appellant

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR
v.	)	No. ACM 40485
Airman (E-2) **AARON R. WILLIAMS, II**, USAF, *Appellant.*	)	Panel No. 3 22 March 2024

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

ASSIGNMENTS OF ERROR[1]

I.

WHETHER THE GOVERNMENT CAN PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL EVEN THOUGH ITS APPLICATION IS NOT CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION WHEN [APPELLANT] WAS CONVICTED OF A NON-VIOLENT OFFENSE AND THIS COURT CAN DECIDE THAT QUESTION.

II.

WHETHER A PLEA AGREEMENT REQUIRING A DISHONORABLE DISCHARGE RENDERS THE SENTENCING PROCEEDING AN "EMPTY RITUAL" AND THUS VIOLATES PUBLIC POLICY.

III.

WHETHER [APPELLANT'S] SENTENCE IS INAPPROPRIATELY SEVERE.

STATEMENT OF THE CASE

Appellant's statement of the case is accepted.

[1] Appellant has raised Issues II and II pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

STATEMENT OF FACTS

The parties entered into a Stipulation of Fact (Pros. Ex. 1), which the Military Judge accepted (R. at 18).[2] In summary: Appellant registered for a Kik account, enabling him to use the communication platform on, among other things his cellular telephone. On or about 3 December 2020, Kik flagged four files of suspected child pornography that Appellant uploaded to the platform from his electronic devices. On 16 April 2021, the Minot Air Force Base Office of Special Investigations (OSI) conducted a search of Appellant's residence and seized five digital media devices. They also interviewed Appellant, who provided incriminating statements and disclosed the passwords to his devices. The Department of Defense Cyber Crime Center (DC3) Cyber Forensic Laboratory received and analyzed the five devices, finding three of them contained suspected child pornography, that is, minors engaged in sexually explicit conduct. As reflected in the Bill of Particulars attached to the Stipulation of Fact and admissions by the defense, the devices contained 31 images and videos of child pornography. The investigation determined that between on or about 1 September 2020 and on or about 20 March 2021, Appellant knowingly and wrongfully possessed, distributed, and viewed child pornography via the Kik platform. At the time he possessed, viewed, and distributed the child pornography, Appellant knew the images and videos contained child pornography, that child pornography was illegal to possess, view, or distribute, and that he had not legal justification for possessing, viewing, or distributing the images and videos. Appellant's possession, viewing, and distribution of the child pornography was of a nature to bring discredit to the armed forces. (Pros. Ex. 1.)

The maximum punishment for Possession or Viewing of Child Pornography is confinement for 10 years, for Distribution of Child Pornography is confinement for 20 years, and

[2] The transcript record from citations in this Answer are in Volume II of the record of trial (ROT).

for all three offenses is forfeiture of all pay and allowances and a dishonorable discharge. Manual for Courts-Martial (MCM), pt. IV, ¶ 95.d(1) and (3) (2019 ed.)

Pursuant to a plea agreement (App. Ex. II), Appellant pleaded guilty to one Charge with three Specifications of Child Pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), that is, one Specification of Possession of Child Pornography, one Specification of Distribution of Child Pornography, and one Specification of Viewing of Child Pornography. (Statement of Trial Results, 3 February 2023, and Entry of Judgment, 23 March 2023, ROT, Vol. 1.) The Military Judge sentenced Appellant to reduction to the grade of E-1, confinement for 18 months, and a dishonorable discharge. (Id.) The Staff Judge Advocate's first indorsement to the Entry of Judgment and Statement of Trial Results in Appellant's case contains the following statement: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (Id.)

ARGUMENT

I.

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. EVEN IF THIS COURT DID POSSESS JURISDICTION TO REVIEW THIS ISSUE, THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT CORRECTLY ANNOTATED THAT APPELLANT'S CONVICTION, A VIOLENT OFFENSE, REQUIRED THAT HE BE CRIMINALLY INDEXED PER THE FIREARM PROHIBITION UNDER 18 U.S.C. § 922.

Law and Analysis

Appellant asserts that 18 U.S.C. § 922 is unconstitutional as applied to him because, in his opinion, he was convicted of a non-violent offense. (App. Br. at 5-9.) Appellant asserts that any prohibitions on the possession of firearms imposed because of a non-violent offense runs afoul of

the Second Amendment, U.S. CONST. amend. II, and the Supreme Court's interpretation of that amendment in N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022) (analyzing New York's concealed carry regime). Appellant's constitutional argument is without merit. *See, e.g.,* United States v. Denney, No. ACM 40360, 2024 CCA LEXIS 101 (A.F. Ct. Crim. App. 8 March 2024) (finding no discussion or relief merited for similar arguments by appellant convicted of child pornography distribution) (unpub. op.) (internal citations omitted).

The Gun Control Act of 1968, 18 U.S.C. § 922, makes it unlawful for any person, *inter alia*, "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year" to possess a firearm. Id. at § 922(g)(1). Appellant was found guilty of one Charge and three Specifications of Possession, Distribution, and Viewing of Child Pornography, in violation of Article 134, UCMJ, which is a crime punishable by imprisonment for a term exceeding one year.[3]

A. This Court lacks jurisdiction to determine whether Appellant should be indexed in accordance with 18 U.S.C. § 922, because that requirement is not part of the findings or sentence.

This Court lacks jurisdiction under Article 66, UCMJ, to order the correction of the Statement of Trial Results or Entry of Judgment on the grounds requested by Appellant. In United States v. Lepore, 81 M.J. 759, 763 (A.F. Ct. Crim. App. 2021), this Court held that it "lacks authority under Article 66, UCMJ, to direct correction of the 18 U.S.C. § 922(g) firearms prohibition" in a court-martial order. Yet Appellant argues here that, because the Court of Appeals for the Armed Forces (CAAF) in United States v. Lemire, 82 M.J. 263, n.* (C.A.A.F. 9 March

[3] Persons *accused* of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial, also may not possess a firearm. *See* Department of the Air Force Instruction (DAFI) 51-201, dated 14 April 2022, para. 29.30.8 (citing 18 U.S.C. § 922(n)).

2022) (decision without published opinion), ordered the Army to correct a promulgating order that annotated an appellant as a sex offender, this Court now has the authority to modify his Statement of Trial Results and Entry of Judgment. (App. Br. at 8). Appellant argues that CAAF's decision in Lemire reveals three things: (1) That CAAF has the authority to correct administrative errors in promulgating orders; (2) by extension, CAAF believes that the service courts of criminal appeal (CCAs) have power to correct administrative errors under Article 66, UCMJ; and (3) CAAF believes both appellate courts have the authority to address constitutional errors in promulgating orders even if they amount to collateral consequences of a conviction. (Id.)

Appellant bases his argument solely on an asterisk footnote to a summary decision without a published opinion issued by CAAF that contained no analysis or reasoning why correction was a viable remedy in that case. *See* Lemire, 82 M.J. 263, n.*. This Court has previously declined to rely on such an incomplete analysis. In Lepore, 81 M.J. at 762, this Court even declined to rely on its own past opinion in United States v. Dawson, 65 M.J. 848 (A.F. Ct. Crim. App. 2007), because that opinion contained no jurisdictional analysis when the Court summarily ordered the correction of the promulgating order. Appellant asks this Court to follow a mere footnote in a decision without a published opinion, which contains no analysis of jurisdiction and no language indicating that correction of a Statement of Trial Results or Entry of Judgment is proper.

Rule 30.4(a) of this Court's Rules of Practice and Procedure states:

> Published opinions are those that call attention to a rule of law or procedure that appears to be overlooked or misinterpreted or those that make a significant contribution to military justice jurisprudence. Published opinions serve as precedent, providing the rationale of the Court's decision to the public, the parties, military practitioners, and judicial authorities.

Because the Lemire decision from CAAF does not call attention to a rule of law or procedure and does not provide any rationale, it does not qualify as "precedent" and should not be followed. In

any event, Lemire involved sex offender registration, not firearms prohibitions. CAAF indeed ordered removal of the designation for sex offender registration from a promulgating order, but its decision did not adjudicate the constitutional question posed here, which is unrelated to the actual findings and sentence in the case. This Court should therefore not read Lemire as requiring an evaluation of the constitutionality of firearms prohibitions for convicted Airmen, or the propriety of the Air Force's regulations requiring indexing.

This Court's jurisdiction is defined entirely by Article 66, UCMJ, which specifically limits its authority to only act "with respect to the findings and sentence as entered into the record. . . ." Article 66(d)(1)(A)); *see generally* United States v. Arness, 74 M.J. 441 (C.A.A.F. 2015) (discussing that CCAs are courts of limited jurisdiction, defined entirely by statute). Article 66, UCMJ, provides no statutory authority for this Court to act on the collateral consequences of conviction. In Lepore, this Court noted the many times it has held that it lacked jurisdiction where appellants sought relief for "alleged deficiencies unrelated to the legality or appropriateness of the court-martial findings or sentence." 81 M.J. at 762 (citations omitted). This Court should reach the same conclusion here.

Although this Court has the authority to modify errors in an entry of judgment under R.C.M. 1111(c)(2), the authority is limited to modifying errors in the performance of its duties and responsibilities, so that authority does not extend to determining the constitutionality of a collateral consequence. Further, the question Appellant asks this Court to determine is fundamentally different from the situations in which our sister courts have corrected errors on promulgating orders. For example, in United States v. Pennington, No. 20190605, 2021 CCA LEXIS 101, at *5 (A. Ct. Crim. App. 2 March 2021) (unpub. op.), the Army Court of Criminal Appeals ordered modification of the statement of trial results in that case to correct erroneous dates, the wording in

charges, the reflection of pleas the appellant entered, and other such clerical corrections. The errors corrected in Pennington are the types of errors that R.C.M. 1111(c)(2) is in place to correct.

Moreover, both the Navy-Marine Corps and the Air Force Courts of Criminal Appeal have held that matters outside the UCMJ and MCM, such as Defense Incident-Based Reporting System (DIBRS) codes and indexing requirements under 18 U.S.C. § 922, are outside their authority under Article 66, UCMJ. *See* United States v. Baratta, 77 M.J. 691 (N-M. Corps Ct. Crim. App. 2018); Lepore, 81 M.J. at 763. Both courts reasoned that they only possessed jurisdiction to act with respect to the findings and sentence as approved by the convening authority. Id. But here, even under the updates made to Article 66(d), UCMJ, this Court's jurisdiction is still limited to acting "with respect to the findings and sentence as entered into the record." 10 U.S.C. § 866(d). The annotation on the first indorsements to the Entry of Judgment and Statement of Trial Results is simply not a part of the finding or sentence entered into the record. Nor does R.C.M. 918 list the firearm prohibition requirements from 18 U.S.C. § 922(g) as part of a court-martial finding. Thus, 18 U.S.C. § 922(g)'s firearm prohibitions and the indexing requirements that follow that statute are well outside the scope of this Court's jurisdiction.

B. Appellant's reliance on his convictions being other than violent offenses is misplaced, because they were "crimes of violence."

Appellant's argument presumes, incorrectly, that his crimes were not violent offenses. The Federal Bail Reform Act, 18 U.S.C. § 3156(a)(4)(C), defines the term "crime of violence" to include Child Pornography; that is, a felony under Chapter 110 of the U.S. Code, including 18 U.S.C. § 2252A. Also, 18 U.S.C. § 3142, which governs the detention or release of a defendant pending trial in Federal court, puts those charged with child pornography crimes squarely in the same class of dangerousness as those accused of drug trafficking, firearms offenses, and terrorism. See Section 3142(e)(3)(E) (establishing statutory presumption of danger to the community).

C. The Statement of Trial Results and Entry of Judgment were prepared correctly in accordance with the applicable Air Force Instruction.

Even if this Court has jurisdiction to review this issue, Appellant is not entitled to relief. The Staff Judge Advocate (SJA) followed the appropriate Air Force regulations in signing the first indorsement to the Statement of Trial Results and Entry of Judgment. Appellant received a conviction for a qualifying offense under 18 U.S.C. § 922(g)(1). *See* DAFI 51-201, dated 14 April 2022, para. 29.32.

Furthermore, para. 29.30. to that DAFI, which applies in this case, shows the SJA correctly annotated the firearm prohibition on the first indorsement:

> If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved.

Para. 29.30.1.1.

> Persons who have been discharged from the Armed Forces under dishonorable conditions . . . This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List … This prohibition does not take effect until after the discharge is executed.

Para. 29.30.5.

Appellant's convictions and sentences qualified him for criminal indexing per 18 U.S.C. § 922(g)(1), and the first indorsements to the Entry of Judgment and Statement of Trial Results properly annotated the prohibition in accordance with DAFI 51-201.[4] Thus, there is no error for this Court to correct.

[4] While the Statement of Trial Results and Entry of Judgment Indorsements indeed annotate the firearm prohibition, they are not what legally mandates the indexing. DAFI 51-201 is the regulation that requires indexing and contains the detailed requirements that mandate notification to relevant law enforcement agencies. Appellant's challenge here is thus misplaced.

D. The Firearm Possession Prohibitions in the Gun Control Act of 1968 are Constitutional.

In Bruen, the Supreme Court held the standard for applying the Second Amendment is:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government 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.

142 S. Ct, at 2129-2130. In his concurrence, Justice Kavanaugh noted the Supreme Court established in both District of Columbia v. Heller, 554 U.S. 570 (2008) (finding that the Second Amendment is an individual, not collective, right), and McDonald v. City of Chicago, 561 U.S. 742 (2010) (applying that right to the states), that the Second Amendment "is neither a regulatory straight jacket nor a regulatory blank check." Id. at 2162 (Kavanaugh, J., concurring) (citations omitted). Accordingly, the proper interpretation of the Second Amendment allows for a "variety" of gun regulations. Id. (citing Heller, 554 U.S. at 636).

The majority opinions in Heller and McDonald also stand for the principle that the right secured by the Second Amendment is not unlimited:

> Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose …. *[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons* and the mentally ill or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Heller, 554 U.S. at 573 (emphasis added).

Appellant acknowledges that both Bruen and Heller limit the application of the Second Amendment to "law abiding, responsible citizens." App. Br. at 6. Even so, Appellant nonetheless

cites to United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), for the proposition that the Government cannot prove that Appellant's firearm prohibition for a non-violent offense is in keeping with the United States' historical tradition of firearm regulation. Id. But this is contrary to what the Fifth Circuit in Rahimi held. That court concluded that the term "law abiding, responsible citizens," was "shorthand in explaining that [Heller's] holding … should not 'be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill[.]" Rahimi, 61 F.4th at 451 (citing Heller, 554 U.S. at 626-627). The Rahimi court went on to assert that Bruen's reference to "ordinary, law abiding" citizens was no different than Heller—it was meant to exclude "from the Court's discussion groups that have historically been stripped of their Second Amendment Rights[.]" Id. The Court determined that defendant Rahimi did not fall into that category of felons prohibited from owning a firearm at the time he was convicted of violating the firearm prohibition under 18 U.S.C. § 922(g)(8), since Rahimi was only subject to an agreed-upon domestic violence restraining order at the time he was convicted. Id. at 452. Thus, he did not have a felony conviction at the time he was charged with illegal possession of a firearm. Id. The Fifth Circuit thus found that the Government had not shown that 18 U.S.C. § 922(g)(8)'s restriction of his Second Amendment rights "fit [] within our Nation's historical traditional of firearm regulation." Id. at 460.

The appellant in Rahimi was in a fundamentally different position than Appellant here. In this case, Appellant has been convicted of an offense punishable by well over a year of confinement (*i.e.*, a felony). He is thus prohibited from owning a firearm under 18 U.S.C. § 922(g)(1). Both the Supreme Court and the Fifth Circuit acknowledge that felony convictions are part of the United States' longstanding tradition on firearm prohibitions. Moreover, these cases do not distinguish between violent and non-violent felonies—prior to Bruen, the Fifth Circuit

opined, "[i]rrespective of whether [an] offense was violent in nature, a felon has shown manifest disregard for the rights of others. He may not justly complain of the limitation on his liberty when his possession of firearms would otherwise threaten the security of his fellow citizens." United States v. Everist, 368 F.3d 517, 519 (5th Cir. 2004). The Court found that limiting a felon's ability to keep and possess firearms was not inconsistent with the "right of Americans generally to individually keep and bear their private arms as historically understood" in the United States. Id.; *accord* Folajtar v. Attorney General of the United States, 980 F.3d 897 (3rd Cir. 2020) (upholding the constitutionality of 18 U.S.C. § 922(g)(1) as applied to felons—including non-violent felons—based upon the Second Amendment's history and tradition). Thus, whether Appellant's crime constituted a violent or non-violent offense would not matter for purposes of restricting Appellant's ability to own a firearm.

Appellant's convictions for Possession, Distribution, and Viewing of Child Pornography proves that he falls squarely into the categories of individuals that should be prohibited from possessing a firearm. Thus, the Indorsements in the Entry of Judgment and Statement of Trial Results correctly annotated that Appellant is subject to 18 U.S.C. 922's prohibitions. Appellant is not entitled to relief.

II.[5]

APPELLANT'S PLEA AGREEMENT DID NOT VIOLATE PUBLIC POLICY.

Additional Facts

Appellant entered into a voluntary plea agreement with the government. (R. at 68-69; App. Ex. II.) In exchange for his guilty plea, Appellant received a limit on his sentencing liability. (R.

[5] Appellant raised this second assignment of error pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

at 79; App Ex. II, para. 2(a)(i)-(iii).) The terms of the plea agreement required the military judge to adjudge a dishonorable discharge and a sentence to confinement between 12 and 18 months for each specification, with each sentence running concurrently. (Id.) Without the plea agreement in place, Appellant risked confinement for 40 years. (R. at 66-67; MCM, pt. IV, para. 95.d (2019 ed.)) Appellant agreed that as part of his sentence the military judge must enter a sentence that included a dishonorable discharge, that he understood the impact of such a discharge, and that he agreed to that provision of his own free will with complete understanding of its meaning and effect. (R. at 80-81, 88-91.) The military judge asked Appellant if, despite the sentencing limitations in the plea agreement, he believed he was "still receiving complete sentencing proceedings," and Appellant responded in the affirmative. (R. at 87-88.)

Standard of Review

This Court determines whether a term in a plea agreement violates Rule for Courts-Martial (R.C.M.) 705 *de novo*. United States v. Hunter, 65 M.J. 399 (C.A.A.F. 2008). Even where the appellate court is reviewing an issue *de novo*, it normally defers to any findings of fact by the military judge unless they are clearly erroneous. United States v. Ayala, 43 M.J. 296, 298 (C.A.A.F. 1995).

Law and Analysis

The term requiring the military judge to adjudge a dishonorable discharge did not render the sentencing proceeding an "empty ritual" in violation of public policy. Neither case law nor the Rules for Courts-Martial preclude a provision in a plea agreement that requires the military judge to adjudge a dishonorable discharge. This Court has addressed and rejected this same issue in the past. *See, e.g.,* United States v. Reedy, No. ACM 40358, 2024 CCA LEXIS 40, *14 (A.F. Ct. Crim. App. 2 Feb. 2024) (unpub. op.); United States v. Kroetz, No. ACM 40301, 2023 CCA

LEXIS 450, *4, 9, 17-18 (A.F. Ct. Crim. App. 27 Oct. 2023) (unpub. op.). *See also*, United States v. Geier, No. ACM S32689 (f rev), 2022 CCA LEXIS 468, *13 (A.F. Ct. Crim. App. 2 Aug. 2022) (unpub. op.) (finding no violation of public policy where plea agreement included punishment to bad conduct discharge).

Article 53a, UCMJ, states a convening authority and an accused "may enter into a plea agreement with respect to such matters as—(A) the manner in which the convening authority will dispose of one or more charges and specifications; and (B) limitations on the sentence that may be adjudged for one or more charges and specifications." 10 U.S.C. § 853a(a)(1)(A), (B). Article 56, UCMJ, states, "In sentencing an accused under . . . [Article 53, UCMJ], 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 . . . ." 10 U.S.C. § 856(c)(1).

Rule for Courts-Martial (R.C.M.) 705(d)(1) through (3) state that plea agreements limiting the sentence that can be adjudged by a court-martial for one or more charges and specifications may contain limitations on the maximum punishment, the minimum punishment that may be imposed by the court-martial, or both.

Despite having negotiated for the terms of his plea agreement, Appellant now argues the exchange of his guilty plea for a specific sentence violated public policy. In part, he argues such a term precluded the sentencing authority from determining what is sufficient, but not greater than necessary, to achieve the principles of sentencing. (App. Br. at 13-14.) Appellant argues, "It is unknown whether the military judge believed a dishonorable discharge was 'not greater than necessary.'" (App. Br. at 14.) To support his argument, Appellant states Congress chose not to mandate a mandatory minimum sentence for Article 134, UCMJ offenses, and it runs afoul to

public policy to preclude the sentencing authority from determining what is sufficient to achieve the principles of sentencing. (App. Br. at 11.)

If Appellant did not want to abide by the terms of his plea agreement, he did not have to sign the agreement and confirm it before the military judge. He and his counsel negotiated the term requiring a dishonorable discharge in exchange for a significant reduction in his potential confinement term from 40 years to a mere 18 months. The record supports that Appellant knowingly and voluntarily entered into his plea agreement.

Moreover, the plea agreement did not limit Appellant's ability to present matters in mitigation and extenuation, showing that Appellant was not deprived of complete presentencing proceedings. In fact, the record shows he did present a full sentencing case, despite the small six-month possible range of incarceration between 12 and 18 months per the plea agreement. While Appellant chose not to call any witnesses, he did submit several personal photographs (Def. Ex. B; R. at 103) and a three-page written unsworn statement (Def. Ex. C; R. at 103). And his trial defense counsel argued for a reduced sentence than that requested by the government, that is, of 12 months of incarceration. (R. at 109-12.)

To support that a mandatory dishonorable discharge is against public policy, Appellant relies on the 2002 Coast Guard case of United States v. Libecap, 57 M.J. 611 (C.G. Ct. Crim. App. 2002), which found invalid the requirement for the appellant to request a bad conduct discharge. (App. Br at 11.) However, Appellant fails to acknowledge that this Court in Geier distinguished Libecap based on current military justice rules:

> *Libecap* does little to advance Appellant's argument because the ruling is based on the fact that the military judge was unaware of the pretrial agreement's sentence limitations and was still deciding whether or not to adjudge a punitive discharge. . . . Under the current rules, however, the military judge is aware of—and bound by—the sentence limits in the plea agreement, so

> the Libecap concerns are absent. In fact, one could rationally conclude the rules regarding plea agreements were designed for the purpose of limiting, if not eliminating, defense efforts to "beat the cap" in sentencing proceedings.

2022 CCA LEXIS 468, *9-10.

Even if the term requiring the military judge to adjudge a dishonorable discharge violated public policy and was not enforceable, there was no prejudice to Appellant. Even without the plea agreement's requirement for a dishonorable discharge, the military judge would have adjudged a dishonorable discharge in any event. The Military Judges' Benchbook explains that a dishonorable discharge "should be reserved for those who, in the opinion of the court, should be separated under conditions of dishonor after conviction of serious offenses of a civil or military nature warranting such severe punishment." Military Judges' Benchbook, Dept. of the Army Pamphlet 27-9 at 2-6-10. Appellant's conviction for child pornography involved the sexual victimization of numerous children aged 10 and under, including the violent, painful rape of, and other illicit sexual conduct with, some infants and toddlers. (R. at 32.) Appellant committed his crimes over many months with other Kik application users, distributing one or two images and videos of adults having sex with children per week to individual users and groups of users. (R. at 41.) Appellant's victimization of those children continue as other people will view, share, and distribute the images to others. Appellant had also demonstrated he was an airman with low rehabilitative potential, having received four prior letters of reprimand (Pros. Exs. 3, 6, 8, and 9), two letters of counseling (Pros. Exs. 4 and 5), and an administrative demotion (Pros. Ex. 10). Appellant deserved to be adjudged a dishonorable discharged for his three serious crimes. As a result, Appellant's plea agreement did not violate public policy, so his assignment of error has no merit.

III.[6]

APPELLANT'S SENTENCES ARE NOT 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

The Court's authority to review a case for sentence appropriateness "reflects the unique history and attributes of the military justice system, [and] includes but is not limited to, considerations of uniformity and evenhandedness of sentencing decisions." United States v. Sothen, 54 M.J. 294, 296 (C.A.A.F. 2001) (citations omitted). 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)(1)(A), UCMJ. The Court "assess[es] sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." United States v. Sauk, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (*en banc*) (*per curiam*) (alteration in original) (citations omitted). Although the Court has discretion to determine whether a sentence is appropriate, it has no power to grant mercy. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted).

Analysis

Appellant challenges his sentences as too severe. He refers to the unpublished opinion in United States v. Kerr, No. 202200140, 2023 CCA LEXIS 434 (N-M Ct. Crim. App. 17 Oct. 2023),

[6] Appellant raised this third assignment of error pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

in which the Navy-Marine Court of Criminal Appeals found the bad conduct discharge was inappropriately severe based on matters in extenuation and mitigation and concluded the military judge should have rejected the plea agreement in its entirety. (App. Br. at 15.) However, Appellant does not explain how Kerr is closely related to his case or that the sentences are highly disparate, so he provides no basis upon which to invoke the Court's ability to ensure uniformity and evenhandedness. *See* United States v. Stanford, No. ACM 40327, 2024 CCA LEXIS 77, *11-12 (rejecting appellant's reference to Kerr in alleging sentence disparity).

As in Stanford, Appellant in this case and Kerr were not co-actors involved in a common crime, nor were they servicemembers involved in a common or parallel scheme, and there is no direct nexus between the servicemembers whose sentence Appellant seeks to compare. *See* Stanford at *12. Moreover, the appellant in Kerr, who was prosecuted for larceny, was an exceptional marine and security forces member who demonstrated "exceptional valor and calmness" during the infamous Abbey Gate bombing in Afghanistan, although he suffered physical (TBI) and psychological (PTSD) injuries as a result. Kerr, 2023 CCA LEXIS at *5. Moreover, the military judge in Kerr found the bad conduct discharge inappropriate because of the matters in extenuation and mitigation. Id. at *8. Appellant in this case, on the other hand, was convicted of viewing and distributing horrific images and videos including rape of a young child, and his short career was only notable for a high number of administrative disciplinary actions. And the military judge in Appellant's case expressed no disagreement with the dishonorable discharge.

Appellant's Assignment of Errors lists his "life experiences," cooperation with the Air Force Office of Special Investigations (AFOSI), and "acceptance of complete responsibility." (Id.) Appellant describes childhood trauma, parental divorce, abuse by his own mother, death of his sister, COVID-19, and his diagnoses of ADHD, autism, and depression; and confessing to the

AFOSI and pleading guilty. (App. Br. at 15-16.) He also emphasized that the case involved 31 images and videos, not hundreds or thousands. (Id. at 16.) Appellant also re-raises his assignment of error in Issue II regarding the plea agreement provision requiring a dishonorable discharge. (Id. at 17.) However, those are all essentially reiteration of matters included in the Stipulation of Fact, Appellant's written statement, and trial defense counsel's argument, all of which the military judge considered when he decided the sentence. (Def. Ex. C; R. at 109-12.) The military judge is presumed to have considered those factors and followed the law, absent clear evidence to the contrary. United States v. Erickson, 65 M.J. 221, 225 (C.A.A.F. 2007). Appellant cites to nothing in the record that calls into question whether the military judge afforded Appellant's points the appropriate weight and followed the law.

Appellant should have received a dishonorable discharge even if he had not agreed to receive it, and his reduced confinement exposure down from 40 years to 18 months was a windfall for him before he even stepped into the courtroom. Child pornography is a unique crime, not only because it involves young victims, but also because it continues to victimize them every time another criminal views it. Additionally, the content of Appellant's child pornography images and video was particularly egregious, including the torturously painful rape of a young victim. Moreover, Appellant was a continuous disciplinary problem throughout his tenure with the Air Force. In conclusion, the nature and seriousness of the offenses, even considering any mitigating factors Appellant raised, support the sentence as entered.

CONCLUSION

WHEREFORE, this Court should affirm the findings and sentence.

STEVEN R. KAUFMAN, Col, USAF
Appellate Government Counsel, Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 22 March 2024 via electronic filing.

STEVEN R. KAUFMAN, Col, USAF
Appellate Government Counsel, Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Airman (E-2), **AARON R. WILLIAMS II,** United States Air Force, *Appellant*.	**APPELLANT'S REPLY BRIEF** Before Panel No. 3 No. ACM 40485 28 March 2024

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

Appellant, Airman (Amn) Aaron R. Williams, pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this Reply to the Appellee's Answer, dated 22 March 2024 (Ans.). In addition to the arguments in his initial brief, filed on 4 March 2024 (App. Br.), Amn Williams submits the following arguments for the issue listed below.

THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL BECAUSE ITS APPLICATION IS NOT CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION WHEN AIRMAN WILLIAMS WAS CONVICTED OF A NON-VIOLENT OFFENSE, AND THIS COURT CAN DECIDE THAT QUESTION.

1. This Court has power to correct the Statement of Trial Results and Entry of Judgment.

This Court should find it persuasive that the Court of Appeals for the Armed Forces (CAAF) has previously directed the correction of a promulgating order to delete the requirement that an appellant register as a sex offender.[1] The Government would have this Court ignore the CAAF's summary disposition in *Lemire*, citing instead to this Court's Rules of Practice and Procedure regarding published opinions as authority.[2] But this Court's rules on publishing do not

[1] *United States v. Lemire*, 82 M.J. 263 (C.A.A.F. 2022) (decision without published opinion).
[2] Ans. at 5-6.

inform whether summary dispositions bind or, at a minimum, inform the analysis. In *LRM v. Kastenberg,* the CAAF reviewed a summary disposition and noted that it "has profited from guidance offered in prior summary dispositions."[3] This Court and its predecessor cite summary dispositions from the CAAF and the Court of Military Appeals (CMA) as authority as well.[4] Even if *Lemire* was a summary disposition, that does not mean this Court can or should ignore its implications for *Lepore*.[5]

Furthermore, the takeaway from *Lemire* is that it contemplates Courts of Criminal Appeals correcting the Statement of Trial Results (STR) and Entry of Judgment (EOJ), which is exactly what Amn Williams seeks here. The Government's attempt to distinguish *Lemire* because it involved sex offender registration, and not firearms restrictions, is thus unpersuasive.[6] Also noteworthy is that the Government does not address the argument that revisions to the Rules for Courts-Martial distinguish *Lepore* from this case.[7]

2. *Unrelated federal statutes are not instructive on whether distribution of child pornography is violent.*

The distribution of child pornography is directly not violent. Despite this, the Government seeks refuge in statutes that categorically identify offenses as violent for a different purpose, even

[3] 72 M.J. 364, 370 (C.A.A.F. 2013) (citing *United States v. Diaz*, 40 M.J. 335, 339–40 (C.M.A. 1994); *Hicks v. Miranda*, 422 U.S. 332, 344–45 (1975) (holding that "lower courts are bound by summary decisions by" the Supreme Court)).
[4] *See, e.g.*, *United States v. Krempel*, No. ACM S30849, 2006 CCA LEXIS 258, at *5 (A.F. Ct. Crim. App. 18 Oct. 2006) (citing the CAAF's summary disposition in *United States v. Holmes*, 61 M.J. 148, 149 (C.A.A.F. 2005) as support for its decision to find instructional error); *United States v. Miller*, 31 M.J. 798, 801 (A.F.C.M.R. 1990) (citing the CMA's summary disposition in *United States v. Madril*, 26 M.J. 87 (C.M.A. 1988) as authority supporting its holding in the case).
[5] *United States v. Lepore*, 81 M.J. 759 (A.F. Ct. Crim. App. 2021).
[6] Ans. at 6.
[7] *See* App. Br. at 8–9.

if they are not, to suggest that distribution of child pornography is a crime of violence.[8] This focus on other provisions misses the essence of the *Bruen* analysis: What is permissible regulation when viewed through the lens of history and tradition? The question is what the historical tradition will support, not the definition provided in the Bail Reform Act or a statute relating to pretrial detention.

History and tradition fail to demonstrate that distribution, possession, and viewing of child pornography are crimes of violence. The definition of "crime of violence" formerly used in the Uniform Firearms Act included "committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, [larceny], burglary, and housebreaking."[9] The text, history, and tradition from the founding indicates that § 922(g)(1)'s firearm ban, as applied to Amn Williams, is not constitutional.

WHEREFORE, Amn Williams requests this Court find the Government's firearm prohibition is unconstitutional, and order that the Government correct the STR and EOJ.

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division, AF/JAJA
1500 W. Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
Megan.crouch.1@us.af.mil

Counsel for Appellant

[8] Ans. at 7 (citing 18 U.S.C. § 3156(a)(4)(C) (the Bail Reform Act); 18 U.S.C. § 3142 (on detention of defendants awaiting trial)).
[9] C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y 695, 701 (2009) (quotations omitted) (citing Uniform Firearms Act of 1926 and 1930).

Certificate of Filing and Service

I certify that an electronic copy of the foregoing was electronically sent to the Court and served on the Air Force Government Trial and Appellate Operations Division on March 28, 2024.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division, AF/JAJA
1500 W. Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
Megan.crouch.1@us.af.mil

Counsel for Appellant

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**MERITS BRIEF OUT OF TIME**
	)	Before a Special Panel
v.	)	
	)	No. ACM 40485 (f rev)
Airman (E-2) **AARON R. WILLIAMS, II** United States Air Force *Appellant*	)	13 January 2025

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

Submission of Case Without Any Additional Specific Assignment of Error

Undersigned counsel, on behalf of Airman (Amn) Aaron R. Williams, II (Appellant), files this merits brief out of time. Good cause exists to accept this filing out of time. Neither this Court's Rules of Practice and Procedure nor the Joint Rules of Appellate Procedure for Courts of Criminal Appeals require an appellant to file a merits brief. Instead, the Rules explain that "[a]ppellate counsel for the accused *may* file assignments of error." JT. CT. CRIM. APP. R. 18 (a) (emphasis added). Further, the rules envision that an appellant may choose not to file a brief, explaining "[i]f no brief is filed on behalf of an accused, a brief on behalf of the United States may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused." JT. CT. CRIM. APP. R. 18 (d)(1). Nevertheless, at this Court's request, undersigned counsel is filing this merits brief out of time to confirm Amn Williams is not raising any additional assignments of error.

On 4 March 2024, Amn Williams assigned three errors for his case. Brief on Behalf of Appellant, 4 March 2024. On 6 August 2024, this Court returned Amn Williams' case to the Chief

Trial Judge, Air Force Trial Judiciary, under Rule for Courts-Martial 1112(d) to correct the record by accounting for a missing convening order, Special Order A-10, dated 29 December 2022, and any other portion of the record that is determined to be missing or defective. Order, 6 August 2024. On 9 September 2024, Amn Williams' case was docketed with this Court for further review. Notice of Docketing, 9 September 2024.

Undersigned counsel attests she has, on behalf of Amn Williams, carefully examined the record of trial in this case, including the newly attached convening order, Special Order A-10, dated 29 December 2022. Amn Williams submits this case to this Court on its merits with no additional specific assignments of error at this stage of appellate review. Amn Williams preserves and maintains those assignments of error raised in the initial brief to this Court filed 4 March 2024. This Court has not yet addressed those assignments of error.

Respectfully submitted,

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
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 was sent via email to the Court and served on the Government Trial and Appellate Operations Division on 13 January 2025.

MEGAN R. CROUCH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770