IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES, *Appellee,*	)	**ADDITIONAL BRIEF IN SUPPORT OF PETITION GRANTED, ADDRESSING THE EFFECT OF BEATY AND COUNSEL'S FAILURE TO OBJECT AT TRIAL WAIVED APPELLANT'S RIGHT TO BE TRIED BY COURT MEMBERS**
v.	)	
Senior Airman (E-4) **WILLIAM J. ST. BLANC, Jr.** USAF, *Appellant.*	)	USCA Dkt. No. 10-0178/AF
	)	Crim. App. No. 37206

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

COMES NOW Appellant, Senior Airman (SrA) William St. Blanc, by and through his undersigned counsel, and provides the following in response to this Honorable Court's request for additional briefs.

There are arguably two standards at issue in this case.

Plain Error Standard

First, because Appellant's trial defense counsel did not object to the maximum sentence at trial, this Court could use a plain error analysis to determine if the trial judge's deliberation under an incorrect maximum punishment entitles Appellant to sentence relief. Appellant re-asserts, as stated in previous briefs to this Court, that he was prejudiced by the military judge's deliberation under an incorrect maximum punishment. This prejudice is demonstrated by the fact that the military judge sentenced Appellant to two years confinement,

which is nearly the maximum confinement period based on the correct maximum punishment. *See United States v. Beaty*, 70 M.J. 39 (C.A.A.F. 2011)(The maximum confinement for one specification of possessing "what appears to be" minors engaging in sexually explicit conduct is four months confinement).

Knowing and Voluntary Waiver Standard

The second standard at issue regards whether Appellant knowingly and voluntarily waived his right to a jury trial. *United States v. Poole*, 26 M.J. 272 (C.M.A. 1988); *United States v. Harden*, 1 M.J. 258 (C.M.A. 1976). This standard is not affected by the lack of objection at trial.

Regardless of whether or not the trial defense counsel objected, there could not be a knowing and voluntary waiver without an understanding of the maximum possible punishment. *United States v. Gigot*, 147 F.3d 1193 (10th Cir. 1998). In this case, Appellant was advised that the maximum punishment he faced included up to 49 years confinement. J.A. 99-100. In actuality, Appellant faced a much lower maximum punishment.

Appellant's declaration explains that had he known the actual maximum punishment he would have elected trial by members. J.A. 92. The chance of avoiding being labeled as a sex offender was central to his decision making process. *Id.* Appellant's decision to elect trial by military judge alone was

an exercise in limiting his likely confinement based on the incorrect maximum punishment of which he was advised. *Id.* Appellant also explains he expected to be acquitted of the attempted indecent acts specification, which would then reduce the potential maximum punishment to only two years and four months confinement. *Id.* As such, Appellant's statement demonstrates that his misapprehension of the maximum sentence was a substantial factor in his decision to waive his right to a jury trial. Therefore, regardless of the lack of objection at trial, Appellant's waiver of his right to a trial by jury was not made knowingly or voluntarily. Therefore, the findings must be set-aside.

WHEREFORE, Appellant requests this Honorable Court set aside the charge IV and its specifications.

Respectfully submitted,

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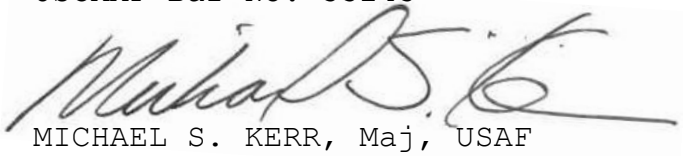

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