IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellant	)	BRIEF ON BEHALF OF APPELLANT
v.	)	Crim.App. Dkt. No. 201900050
Michael J. Brown, First Sergeant (E-8) U.S. Marine Corps Appellee	)	USCA Dkt. No. 20-0288/MC

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UNITED STATES CIRCUIT COURT OF APPEALS CASES

UNITED STATES CODE:

UNIFORM CODE OF MILITARY JUSTICE (UCMJ), 10 U.S.C. §§ 801-946:

REGULATIONS, RULES, OTHER SOURCES

Issue Presented

DID THE COURT ERR IN FINDING THAT IT HAD POTENTIAL JURISDICTION?

Statement of Statutory Jurisdiction

This Court reviews all cases reviewed by a Court of Criminal Appeals, which the Judge Advocate General orders sent for review. Article 67(a)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 867(a)(2) (2012).

Statement of the Case

A panel of members with enlisted representation sitting as a special court-martial convicted Appellee, contrary to his pleas, of abusive sexual contact and disorderly conduct, in violation of Articles 120 and 134, UCMJ, 10 U.S.C. §§ 920, 934 (2012). The Members sentenced Appellee to reduction to paygrade E-7.

Before the Convening Authority took action, Appellee filed a Petition for Extraordinary Relief with the Navy-Marine Corps Court of Criminal Appeals. (J.A. 32–147.) That court stayed proceedings and ordered the parties to answer a Specified Issue:

> WHETHER THE NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS HAS JURISDICTION TO ENTERTAIN THE PETITION FOR EXTRAORDINARY RELIEF WHEN THE JUDGE ADVOCATE GENERAL OF THE NAVY HAS NOT REFERRED THE CASE TO THE COURT PURSUANT TO ARTICLE 69(d), UNIFORM CODE OF MILITARY JUSTICE? *SEE UNITED STATES V. ARNESS*, 74 M.J. 441 (C.A.A.F. 2015).

(N-M. Ct. Crim. App. Order, Mar. 6, 2019).

The court concluded it had jurisdiction to entertain the Petition but denied it, finding that Appellee failed to demonstrate a clear and indisputable right to the relief requested. *Brown v. United States*, No. 201900050, 2019 CCA LEXIS 270 (N-M. Ct. Crim. App. June 27, 2019), *withdrawn*, (Order, Aug. 20, 2019).

The United States moved the court for *en banc* reconsideration on the jurisdiction question. (Resp't Mot. *En Banc* Recons., July 29, 2019.)

The court granted the United States' Motion and withdrew its June 27, 2019, decision. (J.A. 148–149.) The court ordered the parties to answer an additional Specified Issue:

> ASSUMING THIS COURT HAS JURISDICTION TO ENTERTAIN THE PETITION FOR EXTRAORDINARY RELIEF, HAS [APPELLEE] MET THE EXTRAORDINARY WRIT STANDARD TO JUSTIFY ISSUANCE OF A WRIT OF MANDAMUS ORDERING REMOVAL OF THE MILITARY JUDGE ON THE BASIS OF APPARENT BIAS? *SEE HASAN V. GROSS*, 71 M.J. 416, 418 (C.A.A.F. 2012) (CITING *CHENEY V. UNITED STATES DIST. COURT FOR D.C.*, 542 U.S. 367, 380–81 (2004)).

(N-M. Ct. Crim. App. Order, Mar. 11, 2020).

The court held: (1) it had jurisdiction; and (2) Appellee demonstrated no other adequate means of relief. *Brown v. United States*, 79 M.J. 833 (N-M. Ct.

Crim. App. 2020). The court granted the Petition in part and ordered removal of the Military Judge. *Id.* at 849.

Statement of Facts

A. Members convicted Appellee of abusive sexual contact and disorderly conduct, and sentenced him to reduction to paygrade E-7.

After a contested Special Court-Martial, Members convicted Appellee of abusive sexual contact and disorderly conduct, and they sentenced him to reduction to paygrade E-7. (J.A. 30–31.)

B. At a post-trial Article 39(a) Session, the Military Judge denied Appellee's Motion to disqualify himself.

In his Clemency Request, Appellee asked the Convening Authority to order a post-trial Article 39(a) Session to examine alleged trial errors. (J.A. 39.) The Convening Authority did so, and at the Article 39(a) Session, Appellee moved to disqualify the Military Judge due to bias or an appearance of bias. (J.A. 74.) The Military Judge denied the Motion. (J.A. 74.)

C. Appellee filed a Petition for Extraordinary Relief.

Before the Military Judge issued rulings in accordance with the Convening Authority's Order, Appellee filed a Petition for Extraordinary Relief with the Navy-Marine Corps Court of Criminal Appeals, requesting, inter alia, that the court remove the Military Judge. (J.A. 43, 145.)

Argument

THE LOWER COURT ERRED FINDING POTENTIAL JURISDICTION: APPELLEE'S ADJUDGED SENTENCE OF REDUCTION TO PAY GRADE E-7 FAILED TO QUALIFY FOR REVIEW UNDER ARTICLE 66(b), APPELLEE NEVER ASKED FOR REVIEW UNDER ARTICLE 69(b), AND THE JUDGE ADVOCATE GENERAL NEVER ORDERED REVIEW UNDER ARTICLE 69(d).

A. The standard of review is *de novo*.

Jurisdiction is a question of law reviewed *de novo*. *Howell v. United States*, 75 M.J. 386, 389 (C.A.A.F. 2016). The burden to establish jurisdiction rests with the party invoking the court's jurisdiction. *United States v. LaBella*, 75 M.J. 52, 53 (C.A.A.F. 2015).

B. The All Writs Act does not enlarge a court's jurisdiction beyond its statutory limits.

1. Courts of Criminal Appeals may only conduct direct review of cases with approved sentences over a defined limit and other cases where the Judge Advocate General orders review.

Courts of Criminals Appeals have "limited jurisdiction, defined entirely by statute." *United States v. Arness*, 74 M.J. 441, 442 (C.A.A.F. 2015) (citation omitted). Article 66 grants Courts of Criminal Appeals jurisdiction over, and mandates review of, all courts-martial in which the approved sentence "extends to . . . dishonorable or bad-conduct discharge, or confinement for one year or more." Article 66(b)(1), UCMJ.

Cases tried at a general court-martial with approved sentences under the limits defined in Article 66(b) "shall be examined in the office of the Judge Advocate General." Article 69(a), UCMJ. Cases ineligible for review under Article 66(b) or Article 69(a) may be reviewed by the Judge Advocate General for "error prejudicial to the substantial rights of the accused." Article 69(b), UCMJ.

After review under Article 69(a) or 69(b), the Judge Advocate General may order a case sent to a Court of Criminal Appeals for further review under Article 66(b). Article 69(d), UCMJ. The Courts of Criminal Appeals are limited by the jurisdiction granted in Article 69(d). *Arness*, 74 M.J. at 443. A Judge Advocate General's referral to a Court of Criminal Appeals is a "statutory prerequisite for its review." *Id.*

2. The All Writs Act permits courts to issue writs necessary or appropriate in aid of their existing and potential statutory jurisdiction.

Courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The authority to issue writs is limited to a court's existing statutory jurisdiction; the Act does not "enlarge [a court's] jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 534–35 (1999).

The All Writs Act "extends to the potential jurisdiction of the appellate court where an appeal is not then pending but may be later perfected." *FTC v. Dean*

Foods Co., 384 U.S. 597, 603–04 (1966); *see Roche v. Evaporated Milk Ass'n.*, 319 U.S. 21, 25 (1943).

3. Extraordinary relief may issue in aid of appellate jurisdiction to help preserve the status quo and preserve the appellate court's future jurisdiction.

Writs may issue under the All Writs Act "in aid of" potential jurisdiction where the writs help "preserve the court's jurisdiction or maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels . . . Such power has been deemed merely incidental to the court's jurisdiction to review final agency action." *Dean Foods*, 384 U.S. at 603 (quoting *Arrow Transp. Co. v. S. R. Co.*, 372 U.S. 658, 671 n.22 (1963) (recognizing "limited judicial power to preserve [a] court's jurisdiction or maintain the *status quo*") (emphasis in original)); *McClellan v. Carland*, 217 U.S. 268, 280 (1910) ("But we think it the true rule that where a case is within the appellate jurisdiction of the higher court a writ of mandamus may issue in aid of the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below.").

4. This Court has found potential jurisdiction, prior to an approved sentence qualifying for Article 66(b) review, in a variety of circumstances.

This Court held in *Howell* that potential jurisdiction permits the Courts of Criminal Appeals to "issue opinions in matters that may reach [their] actual

jurisdiction." *See Howell*, 75 M.J. at 390 n.4. These cases include an accused with an adjudged sentence that might later have met the prerequisites for approved sentences resulting in Article 66(b) review and other cases where trial had not yet begun and no findings or sentence were yet reached. *See id.* at 389 (finding potential jurisdiction prior to convening authority action on adjudged sentence of nine years' confinement); *LRM v. Katsenberg*, 72 M.J. 364, 366 (C.A.A.F. 2013) (finding potential jurisdiction where victim's input on an evidentiary ruling might have affected findings and sentence and resulted in Article 66(b) review); *Hasan v. Gross*, 71 M.J. 416, 417 (C.A.A.F. 2012) (presumably finding potential jurisdiction where maximum possible punishment might have resulted in an adjudged and approved sentence that resulted in Article 66(b) review).

C. The lower court's application of potential jurisdiction is erroneously expansive for seven reasons.

1. *Arness* held that no All Writs Act relief was possible because the Judge Advocate General never referred the case to the Court of Criminal Appeals. So too here.

In *Arness*, this Court declined to find All Writs Act jurisdiction for the Court of Criminal Appeals to entertain a writ of error *coram nobis* post-Article 76 finality. 74 M.J. at 442–43. The Judge Advocate General in *Arness* "elected not to send the case to the [Court of Criminal Appeals] for review under Article 69(d)." *Id*. at 442. This Court held that because "the Judge Advocate General did not refer Appellant's case to the CCA—a statutory prerequisite for review—the CCA was

without jurisdiction to review it" under the All Writs Act. *Id*. at 443. This Court noted that Article 69(d) "does not authorize the CCA to review every case which is subject to action by the Judge Advocate General pursuant to Article 69." *Id*.

So too here. The Judge Advocate General never referred Appellee's case to the Court of Criminal Appeals. Thus, the lower court lacked the "statutory prerequisite for review" to entertain the writ under the All Writs Act. *Id*.

2. Remedial jurisdiction cannot justify review at the Court of Criminal Appeals.

In *United States v. Booker*, the Court of Criminal Appeals considered the Navy-Marine Corps Appellate Government Division's petition for extraordinary relief under "potential jurisdiction" where the military judge ruled the maximum possible sentence for an Article 120(b) offense was one month and no punitive discharge. 72 M.J. 787, 790 (N-M. Ct. Crim. App. 2013). The court justified its "potential jurisdiction" because: (1) the military judge's ruling affected the "sentence" that could be imposed; (2) the military judge's ruling, unreviewed under the All Writs Act, would have thwarted automatic review under Article 66(b); and (3) the Judge Advocate General could in the future "exercise[] her authority under Article 69(d), UCMJ, to forward the record of trial to us for review following a finding of guilty." *Id*. at 797.

But *Brown* notes that *Booker* "relied on neither of the premises," *Brown*, 79 M.J. at 839 n.7, this Court rejected in *Arness*, 74 M.J. at 443. The lower court

distinguished that *Booker* did not involve a writ of error *coram nobis* where the Judge Advocate General declined to order the case sent to the Court of Criminal Appeals for review. *Brown*, 79 M.J. at 839 n.7. However, *Booker* has no effect on the use of potential jurisdiction to preserve later jurisdiction: the *Booker* the court issued the writ to prevent an erroneous limitation on a sentence that might have later qualified for review under Article 66(b), if approved by the convening authority. *See Booker*, 72 M.J. at 796–97.

Additionally, *Arness* also overruled the "expansive [jurisdictional] approach" taken in *Unger v. Ziemniak,* which was not a writ of error *coram nobis* case. *Arness,* 74 M.J. at 443 (overruling the approach of *Unger,* 27 M.J. 349 (C.M.A. 1989), and other cases, "[t]o the extent they are inconsistent with our opinion in this case"). The *Unger* holding incorrectly presumed that the All Writs Act granted "remedial jurisdiction" to the Courts of Criminal Appeals in a case with no statutory path to direct review. *Arness,* 74 M.J. at 443; *Unger*, 27 M.J. at 353.

Thus, contrary to the lower court's suggestion, that *Arness* involved a writ of error *coram nobis* was not *Arness*' explicit reason for rejecting *Unger*'s "remedial jurisdiction" as a basis for All Writs Act relief. *See* 74 M.J. at 443.

Indeed, at the time of *Unger*—in 1989—the Judge Advocate General could only send general courts-martial to the Courts of Military Review; there was no

jurisdictional path for special courts-martial to be reviewed by order of the Judge Advocate General. Military Justice Act of 1983, Pub. L. No. 98-209, 97 Stat. 1393 (1983); *Unger*, 27 M.J. at 351 (stating "there would seem to be no way that a conviction of an officer by a special court-martial would qualify for review by this Court under Article 67" or "by a Court of Military Review pursuant to Article 66(b)"). Only after *Unger*, Congress expanded Article 69(d) to authorize the Judge Advocate General to forward special courts-martial like *Unger* for review at the Courts of Military Review. National Defense Authorization Act for Fiscal Year 1990 and 1991, Pub. L. No. 101-189, 103 Stat. 1352 (1989).

As *Arness* rejected such an expansive view of "remedial jurisdiction," it should not be read to permit the Courts of Criminal Appeals to engage in remedial jurisdiction under Article 69(d). *See* 74 M.J. at 443.

3. Once Appellee's sentence was adjudged below the statutory limits in Article 66(b), the Court of Criminal Appeals lost potential jurisdiction to review the case on the basis of the sentence.

In *McClellan*, the Supreme Court noted that the "true rule" is that potential jurisdiction preserves jurisdiction that "might otherwise be defeated." 217 U.S. at 280. And in *Arrow Transp. Co.*, the Supreme Court noted that courts have "a limited judicial power to preserve the court's jurisdiction or maintain the status quo . . . pending review of an agency's action through the prescribed statutory channels." 372 U.S. at 671 n.22.

The All Writs Act cannot create jurisdiction where none exists. *See Goldsmith*, 526 U.S. at 534–35; *see also Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32–34 (2002); *Loving v. United States*, 62 M.J. 235, 239–40 (C.A.A.F. 2005).

The Courts of Criminal Appeals automatically review cases that meet the Article 66(b) minimum threshold for approved sentences. Article 66(b), UCMJ (mandating that "Judge Advocate General shall refer to a Court of Criminal Appeals" cases with qualifying sentence).

Thus if the charges on the charge sheet, or the adjudged sentence, have a potential to eventually produce an approved sentence that qualifies for review under Article 66(b), then the potential still remains for a Court of Criminal Appeals to automatically review the case. *See Goldsmith*, 526 U.S. at 534–35; *Howell*, 75 M.J. at 389; *LRM*, 72 M.J. at 366; *Hasan*, 71 M.J. at 417. And in those cases, where Article 66(b) review "might otherwise be defeated," issuance of a writ may be "in aid of" a Court of Criminal Appeals' existing statutory jurisdiction. *See McClellan*, 217 U.S. at 280.

But once an accused is adjudged a sentence below the Article 66(b) threshold for review, or if the charge sheet can never produce a sentence meriting review under Article 66(b), the "potential jurisdiction" on that basis is never possible.

4. *LRM*, *Howell*, and *Hasan* are not this case. Only the Judge Advocate General's order sending the case for review could have created jurisdiction under Article 69(d) here.

LRM, *Howell*, and *Hasan* all, at the time of petition, could have had approved sentences qualifying for Article 66(b) review. *See Howell*, 75 M.J. at 389; *LRM*, 72 M.J. at 366; *Hasan*, 71 M.J. at 417. Those cases therefore still had the possibility of approved sentences meriting automatic review at the Court of Criminal Appeals, making issuance of the writ in aid of preserving that potential jurisdiction. *See Dean Foods*, 384 U.S. at 603–04; *McClellan*, 217 U.S. at 280.

Unlike *LRM*, *Howell*, and *Hasan,* Appellee's adjudged sentence, at the time of his Petition, was below the Article 66(b) threshold for automatic review. (J.A. 31.) That sentence extinguished the potential jurisdiction on the basis of a possible approved sentence that was still available in *LRM*, *Howell*, and *Hasan*. Lacking a potential Article 66(b) jurisdiction to preserve and having erroneously found that Article 69(d) provides a pathway for potential jurisdiction, *see supra* Section C.1., the lower court erred finding it had the potential jurisdiction to issue the writ.

In its attempt to justify potential jurisdiction despite Appellee's sentence, the lower court analogizes the "intervening conditions precedent" to actual jurisdiction under Article 66(b) in *LRM*, *Howell*, and *Hasan*, to the prerequisite for actual jurisdiction under Article 69(d). *Brown*, 79 M.J. at 839–40.

But in distinguishing *Howell*, the lower court ignores the distinction between post-trial action by a convening authority and that by the Judge Advocate General under Article 69(d). *See Brown*, 79 M.J. 839–40. A convening authority, by approving a lower sentence that would not trigger Article 66(b) review, could prevent review that would have otherwise occurred by operation of a qualifying sentence.

In contrast, the order of a Judge Advocate General sending a case for review is the only way cases falling short of an Article 66(b) approved sentence may be directly reviewed at the Courts of Criminal Appeals. Article 69, UCMJ.

In other words, the "intervening conditions precedent" to the court's review of *Howell* were of the sort that could defeat jurisdiction, not create it, rendering issuance of the writ in aid of preserving potential Article 66(b) jurisdiction. *See Dean Foods*, 384 U.S. at 603. So too, in *LRM* and *Hasan*, the "intervening conditions precedent" in those cases—acquittal, dismissal, sentence, or convening authority's action—could only serve to defeat Article 66(b) jurisdiction, rather than create it.

The lower court thus erred when it equated the "procedural assumptions that had to be made to view those cases as possibly qualifying for appellate review under Article 66(b)" with "the assumptions required to divine whether the [Judge

Advocate General] will receive a qualifying appeal and elect to forward the case." *Brown*, 79 M.J. at 839–40.

5. Similar to *In re Tennant,* only after the Judge Advocate General or accused takes a "preliminary step" can potential jurisdiction support All Writs Act review.

In *In re Tennant*, the United States Court of Appeals for the District of Columbia Circuit found it lacked authority under the All Writs Act to issue a writ of mandamus "in aid of" prospective jurisdiction to review action the Federal Communication Commission might take. 359 F.3d 523, 529 (D.C. Cir. 2004). There, the petitioner filed a writ of mandamus to prevent the placement of a wireless communications tower, but never completed the first step of initiating proceedings by asking the Federal Communication Commission to do the same. *Id*. at 526.

The *In re Tennant* court noted that only "[o]nce there has been a proceeding of *some* kind instituted before an agency or court that might lead to an appeal [can we] . . . speak of the matter as being within [our] appellate jurisdiction—however prospective or potential that jurisdiction might be." *Id*. at 529 (quotation marks omitted). But the court also noted that "[i]t is quite another [thing] to claim such power solely on the basis that events *might* lead to a filing before an agency or lower court, which *might* lead to an appeal to this court." *Id.* (emphasis in original). Thus, it "is not too much to ask that parties seeking mandamus relief

take at least the first preliminary step that might lead to appellate jurisdiction in this court in the future." *Id.*

The *In re Tennant* court distinguished two prior "potential jurisdiction" holdings. *Id.* at 530 n.5, 531. First, in *Telecomms. Research & Action Ctr.* (*TRAC*), the court found potential jurisdiction because the petitioners had already instituted a proceeding at the Federal Communication Commission. *Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 72 (D.C. Cir. 1984). Second, in *In re Bluewater Network*, the court found potential jurisdiction where the Coast Guard was required by statute to issue regulations and such regulations could be reviewed by the appellate court, but the Coast Guard refused to issue the regulations. *In re Tennant*, 358 F.3d at 530 n.5 ("Our prospective jurisdiction . . . was plainly defeated by the agency's action, and so we had jurisdiction under the All Writs Act. No petition for agency action was necessary to trigger our jurisdiction. ") (citing *In re Bluewater Network*, 234 F.3d. 1305 (D.C. Cir. 2000)).

Here, the preliminary step that may lead to "potential jurisdiction" is the Judge Advocate General's action under Article 69(b) or Article 69(d) or, at the very least, an accused's application for review under Article 69(b). *See* Article 69, UCMJ. Unlike *Bluewater*, the Judge Advocate General's decision to refer is the statutory "action to trigger" the Courts of Criminal Appeals' direct review jurisdiction. *In re Tennant*, 358 F.3d at 530 n.5; *see also Arness*, 74 M.J. at 433.

But unlike *TRAC*, there is no pending application under Article 69(b), much less action under Article 69(d), that "*might* lead to" review by the lower court. *See In re Tennant*, 358 F.3d at 529 (emphasis in original). Like *In re Tennant*, the lower court's speculation regarding possible Article 69 action is too remote to support a finding of potential jurisdiction where the statutory scheme requires an affirmative preliminary step to achieving that jurisdiction.

6. The lower court wrongly speculates that the resumption of post-trial proceedings and a possible mistrial ruling could justify "potential jurisdiction" under the All Writs Act.

"The military judge may . . . declare a mistrial when such action is manifestly necessary in the interest of justice." R.C.M. 915(a). "A declaration of a mistrial shall have the effect of withdrawing the affected charges and specifications from the court-martial." R.C.M. 915(c)(1). "Upon declaration of a mistrial, the affected charges are returned to the convening authority who may refer them anew or otherwise dispose of them." Discussion, R.C.M. 915(c)(1) (citation omitted).

Here, the lower court incorrectly finds potential jurisdiction under Article 66(b) because "the issues taken up at the post-trial Article 39(a) session [could] result[] in a mistrial." *Brown*, 79 M.J. at 837. But this requires speculation that the Military Judge may find "manifest[] necess[ity]" for a mistrial, and further speculation that the Convening Authority may refer Charges anew, and that the charges on the Charge Sheet may contain a maximum sentence qualifying for

Article 66(b) review. *See* R.C.M. 915. This Court should reject such speculation in the service of creating potential jurisdiction on any ground. *Cf. In re Tennant,* 359 F.3d at 529 (rejecting attempts to abandon "preliminary step" requirement to permit potential jurisdiction by "spin[ning] out 'for want of a nail scenarios' from any set of facts that could eventually lead to this court").

7. Congress vested the Judge Advocate General with the sole authority to create jurisdiction for Article 69 cases at the Courts of Criminal Appeals.

Congress promulgated Article 69 as the "appeals statute[] [that] establish[es] the conditions of" the appellate review of cases that do not meet the requirements of Article 66(b). *See Roche*, 319 U.S. at 30. By statutory design, the Courts of Criminal Appeals must await the decision of the Judge Advocate General under Article 69(d) or, at the very least, an accused's request for the Judge Advocate General to review under Article 69(b). *See* Article 69(b)–(d), UCMJ; *In re Tennant*, 358 F.3d at 529.

Congress, having observed the "anomaly" of appellate courts reviewing cases with non-qualifying sentences under the All Writs Act, believed the "purpose of [the UCMJ] would be better served if such review were conducted under a jurisdictional statute as opposed to the ad hoc procedures of the All Writs Act." (J.A. 153.) But Congress did not expand automatic review to all cases, regardless of sentence. Instead, Congress vested authority solely in the Judge Advocate

General to create jurisdiction at the Courts of Criminal Appeals by forwarding for review cases whose sentences do not meet the Article 66(b) statutory minimums. *See* Article 69, UCMJ.

Military courts have the authority to issue writs. *Noyd v. Bond*, 395 U.S. 683, 695 n.7 (1969). But exercise of that authority must reflect the Courts of Criminal Appeals' role in ensuring compliance with the statutory scheme as envisioned by Congress. A Court of Criminal Appeals cannot find potential jurisdiction to intervene where an accused's sentence fails to qualify for review under Article 66(b), the accused never asks for review under Article 69(b), and the Judge Advocate General never orders review under Article 69(d).

Conclusion

The United States respectfully requests that this Court vacate the lower court's decision and dismiss Appellee's writ for lack of jurisdiction.

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Certificate of Compliance

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Certificate of Filing and Service

I certify that I delivered the foregoing to the Court and served a copy on opposing counsel on June 29, 2020.

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