

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,)	UNITED STATES' ANSWER
<i>Appellee,</i>)	TO SUPPLEMENT TO
)	PETITITON FOR GRANT OF
v.)	REVIEW
)	
Master Sergeant (E-7))	Crim. App. Dkt. No. 40466
DANIEL L. BLOCK,)	
United States Air Force,)	USCA Dkt. No. __-____/AF
<i>Appellant.</i>)	

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

INTRODUCTION

The United States responds to Issue I of Appellant's Supplement to Petition for Grant of Review in this Answer, and otherwise enters its general opposition to the other issues raised, with the understanding that this Court may grant review of some of the issues as trailers to United States v. Johnson, 2023 CCA LEXIS 330 (A.F. Ct. Crim. App. 9 August 2023), *pet. granted*, 2024 CAAF LEXIS 561 (C.A.A.F. 24 September 2024). The United States relies on its briefs filed with the Air Force Court of Criminal Appeals (AFCCA) on 10 July 2024, unless requested to do otherwise by this Court.

This Court should not grant review of Issue I because Appellant did not raise the 18 U.S.C. § 922 annotation on the Statement of Trial Results (STR) or Entry of Judgment (EOJ) as a post-trial processing error under Article 66(d)(2) in his original

assignments of error brief at the Court of Criminal Appeals (CCA) as required by United States v. Williams, CAAF LEXIS 501 (C.A.A.F. 2024). Since Appellant did not properly raise the issue under Article 66(d)(2) at AFCCA, there is nothing about AFCCA's actions with respect to Article 66(d)(2) for this Court to review.

ISSUES PRESENTED

I.

WHETHER, IN LIGHT OF UNITED STATES V. WILLIAMS, __ M.J. __, CAAF LEXIS 501 (C.A.A.F. 2024), THE AIR FORCE COURT OF CRIMINAL APPEALS HAD JURISDICTION UNDER ARTICLE 66(d)(2), UNIFORM CODE OF MILITARY JUSTICE, TO PROVIDE APPROPRIATE RELIEF FOR THE ERRONEOUS FIREARM PROHIBITION ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT.

II.

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES HAS JURISDICTION AND AUTHORITY TO DIRECT THE MODIFICATION OF THE 18 U.S.C. § 922 PROHIBITION NOTED ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT.

III.

WHETHER REVIEW BY THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES OF THE 18 U.S.C. § 922 PROHIBITION NOTED ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT WOULD SATISFY THIS COURT'S PRUDENTIAL CASE OR CONTROVERSY DOCTRINES.

IV.

AS APPLIED TO [APPELLANT], WHETHER 18 U.S.C. § 922 IS CONSTITUTIONAL IN LIGHT OF RECENT PRECEDENT FROM THE SUPREME COURT OF THE UNITED STATES.

STATEMENT OF STATUTORY JURISDICTION

AFCCA reviewed this case under Article 66(d), UCMJ. If it grants review of this case, this Court will have jurisdiction over this matter under Article 67(a)(3), UCMJ.

STATEMENT OF THE CASE

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

At AFCCA, Appellant argued in his Assignment of Error that the 18 U.S.C. § 922 firearms prohibition was unconstitutional as applied to Appellant and that the court had jurisdiction to decide that issue under Article 66(d)(1). But Appellant did not request relief at AFCCA under Article 66(d)(2) on the grounds that the 18 U.S.C. § 922 firearms annotations on the Statement of Trial Results (STR) or Entry of Judgment (EOJ) constituted a post-trial processing error.

On 19 September 2024, Appellant submitted a Motion to Reconsider, mentioning Article 66(d)(2) for the first time, which the government opposed on 26 September 2024. On 30 September 2024, AFCCA denied Appellant's Motion.

ARGUMENT

I.

AFCCA HAD NO AUTHORITY TO CORRECT THE 18 U.S.C. § 922 ANNOTATION ON THE STATEMENT OF TRIAL RESULTS OR THE ENTRY OF JUDGMENT BECAUSE APPELLANT DID NOT RAISE OR DEMONSTRATE POST-TRIAL PROCESSING ERROR UNDER ARTICLE 66(d)(2) AT AFCCA.

Standard of Review

CCA are courts of limited jurisdiction, and this Court reviews the scope of a CCA's jurisdiction *de novo*. United States v. Brubaker-Escobar, 81 M.J. 471, 473-474 (C.A.A.F. 2021).

Law and Analysis

In this case, like in Williams, “Appellant did not raise the issue to the CCA and consequently did not trigger the CCA’s correction authority under Article 66(d)(2), UCMJ.” 2024 CAAF LEXIS 501, *14. Because Appellant never raised the issue in his initial brief, nor met his burden to demonstrate error, AFCCA was not authorized to *sua sponte* review his case under Article 66(d)(2). AFCCA also had no duty to review the issue when Appellant raised it for the first time on reconsideration. Appellant’s failed motion for reconsideration is insufficient to satisfy his burden under Williams to raise the issue, because AFCCA was well within their discretionary authority to deny the motion. United States Air Force Court of

Criminal Appeals, Rules of Practice and Procedure, Rule 31(a) (23 December 2020, as amended through 15 April 2021); United States v. Navarette, 81 M.J. 400, 409 n.2 (C.A.A.F. 2021) (noting CAAF denies motions for reconsideration when losing party primarily seeks reconsideration based on information that losing party could have presented at an earlier time but did not) (Maggs, J., dissenting) (citation omitted). Thus, there is nothing about AFCCA's actions with respect to Article 66(d)(2) for this Court to review. Appellant's argument in Issue I is without merit, and this Court should decline to review it.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's petition for grant of review as to Issue I.



STEVEN R. KAUFMAN, Col, USAF
Appellate Government Counsel
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 30478



MARY ELLEN PAYNE
Associate Chief
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 34088

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was transmitted by electronic means to the Court and transmitted by electronic means with the consent of the counsel being served via email to Capt Samantha M. Castanien (Samantha.Castanien.1@us.af.mil) this day, 25 November 2024.



STEVEN R. KAUFMAN, Col, USAF
Appellate Government Counsel
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 30478

CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

This brief complies with the type-volume limitation of Rule 24(c) because this brief contains 813 words. This brief complies with the typeface and type style requirements of Rule 37.

Dated 25 November 2024.

A handwritten signature in black ink, appearing to read 'SRK', is positioned above the typed name and title.

STEVEN R. KAUFMAN, Col, USAF
Appellate Government Counsel
Government Trial and
Appellate Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 30478