IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,	)	**SUPPLEMENT TO THE**
Appellee,	)	**PETITION FOR GRANT**
v.	)	**OF REVIEW**
	)	
JENNESIS V. DOMINGUEZ-GARCIA,	)	
Airman First Class (E-3),	)	Crim. App. Dkt. No. S32694 (f rev)
United States Air Force,	)	
Appellant.	)	USCA Dkt. No. 24-XXXX/AF

ISSUE PRESENTED

WHETHER THERE IS JURISDICTION TO DIRECT CORRECTION OF THE ERRONEOUS AND UNCONSTITUTIONAL FIREARM PROHIBITION NOTED ON THE STAFF JUDGE ADVOCATE'S INDORSEMENT TO THE ENTRY OF JUDGMENT.

STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 66(d), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d).[1] This Honorable Court has jurisdiction to review this case pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

STATEMENT OF THE CASE

On 12-14 April 2021, at a special court-martial at Robins Air Force Base, Georgia, Airman First Class (A1C) Jennesis Dominguez-Garcia pleaded guilty

[1] All citations to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*).

before a military judge to one charge and one specification of negligent dereliction of duty,[2] in violation of Article 92, UCMJ, 10 U.S.C. § 892, and one charge and one specification of simple assault with an unloaded firearm, in violation of Article 128, UCMJ, 10 U.S.C. § 928. *EOJ*, Apr. 30, 2021. The Government withdrew and dismissed one charge and one specification of communication of a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915. *Id*. The military judge sentenced A1C Dominguez-Garcia to a reprimand, reduction to the grade of E-1, confinement for seven days, and a bad-conduct discharge. *Id*. The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, April 29, 2021.

On 11 October 2022, the AFCCA affirmed the findings as correct in law and fact but set aside the sentence. *United States v. Dominguez-Garcia*, No. ACM S32694, 2022 CCA LEXIS 582, at *5-8 (A.F. Ct. Crim. App. Oct. 11, 2022) (Appendix A). The record was returned to The Judge Advocate General, and a rehearing was authorized. Appendix A at 2, 12. The convening authority found a rehearing on the sentence to be impracticable and approved a sentence of no punishment. *EOJ*, Sep. 14, 2023. On May 31, 2024, the AFCCA affirmed the new sentence. Appendix B.

[2] A1C Dominguez-Garcia pleaded guilty by exceptions and substitutions, as the Government had charged willful dereliction of duty. *Entry of Judgment* (*EOJ*), Apr. 30, 2021. The Government went forward on the greater offense, but the military judge found A1C Dominguez-Garcia not guilty of willful dereliction. *Id*.; R. at 156.

STATEMENT OF FACTS

In October 2020, A1C Dominguez-Garcia pointed an unloaded firearm at her friend on base, conduct for which she was later convicted of at a special court-martial. *EOJ*, Sep. 14, 2023; R. at 20-23, 160-61. While completing the EOJ for her rehearing, the Government determined, for the first time, A1C Dominguez-Garcia qualified for a firearms prohibition under 18 U.S.C. § 922 by marking "Yes" on "Firearm Prohibition Triggered" on the Staff Judge Advocate's 1st Indorsement. *EOJ*, Sep. 14, 2023. A1C Dominguez-Garcia challenged this restriction before the AFCCA, which rejected the challenge without comment. Appendix B at 2.

REASONS TO GRANT REVIEW

First, A1C Dominguez-Garcia's case involves a jurisdictional question that is in dispute between the service courts of criminal appeals. *See, e.g.*, *United States v. Macias*, No. 202200005, 2022 CCA LEXIS 580, at *2 (N.M. Ct. Crim. App. Oct. 13, 2022) (correcting erroneous firearm ban notation); *United States v. Shaffer*, ARMY 20200551, 2021 CCA LEXIS 682, at *1 n.2 (A. Ct. Crim. App. Dec. 15, 2021) (correcting erroneous firearm ban notation). Additionally, her case raises an undecided question of law regarding the application of 18 U.S.C. § 922(g)(1) to special courts-martial, also disputed among the services,[3] along with an as-applied

[3] A1C Dominguez-Garcia is aware of another petition before this Court seeking review of the application of 18 U.S.C. § 922(g)(1) to special courts-martial. *See United States v. Vanzant*, USCA Dkt. No.____/AF (filed Jun. 14, 2024). While the

constitutional challenge to 18 U.S.C. § 922 overall. *Id*. For these three reasons, this Court should grant review of this issue as a trailer to *United States v. Williams*, No. 24-0015/AR, 2024 CAAF LEXIS 43 (C.A.A.F. Jan. 24, 2024) (granting review of a challenge to 18 U.S.C. § 922), which it has done previously.[4]

Argument

Standard of Review

This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Hale*, 78 M.J. 268, 270 (C.A.A.F. 2019); *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017).

Law and Analysis

1. This Court—and the AFCCA—may order correction of the EOJ.

While the AFCCA did not provide a rationale for rejecting Appellant's assignment of error, it has previously stated that correcting a firearms prohibition

---

Air Force Court did not reach the merits of the issue in either case, the Government argued 18 U.S.C. § 922(g)(1) applied to both cases, which is inconsistent with the other service courts' handling of the issue. *See, e.g.*, *Macias*, No. 202200005, 2022 CCA LEXIS 580, at *2 ("Under the statute, convictions adjudicated by a special court-martial do not count as offensives punishable by imprisonment for a term exceeding one year because of the jurisdictional limitations attached to that forum."); *Shaffer*, ARMY 20200551, 2021 CCA LEXIS 682, at *1 n.2 (correcting firearm ban on STR to "No" to in special court-martial drug conviction case).

[4] *See, e.g.*, *United States v. Stanford*, No. 24-0130/AF, 2024 CAAF LEXIS 254 (C.A.A.F. May 7, 2024); *United States v. Fernandez*, No. 24-0101/AF, 2024 CAAF LEXIS 239 (C.A.A.F. Apr. 26, 2024); *United States v. Johnson*, No. 24-0004/SF, 2024 CAAF LEXIS 199 (C.A.A.F. Mar. 29, 2024); *United States v. Lampkins*, No. 24-0069/AF, 2024 CAAF LEXIS 105 (C.A.A.F. Feb. 22, 2024).

"relates to a collateral matter and is beyond the scope of our authority under Article 66." *United States v. Lepore*, 81 M.J. 759, 760 (A.F. Ct. Crim. App. 2021). However, *Lepore's* rationale is not applicable to this case given updates to the MCM.

In *Lepore*, the AFCCA made clear that "[a]ll references in this opinion to the UCMJ and [R.C.M.] are to the [M.C.M], United States (2016 ed.)." 81 M.J. at 760 n.1. The AFCCA then emphasized that "the mere fact that a firearms prohibition annotation, not required by the [R.C.M.], 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." *Id*. at 763 (emphasis added).

However, since 2019, the R.C.M. have stated that both the Statement of Trial Results (STR) and the EOJ contain "[a]ny additional information . . . required under regulations prescribed by the Secretary concerned." R.C.M. 1101(a)(6); 1111(b)(3)(F). Under the applicable Air Force regulation, this information concerning the right to bear arms was required. Department of the Air Force Instruction 51-201, *Administration of Military Justice*, dated April 8, 2022, ¶ 13.3 (requiring the STR to include "whether the following criteria are met: . . . firearm prohibitions"). As such, the AFCCA's analysis in *Lepore* is no longer relevant since the R.C.M. now require—by incorporation—a determination on firearms prohibitions.

Additionally, the AFCCA's decision in *Lepore* stands in tension with this Court's decision in *United States v. Lemire*, where this Court directed that "the promulgating order be corrected to delete the requirement that Appellant register as a sex offender." 82 M.J. 263, at n.* (C.A.A.F. 2022). Ultimately, there is jurisdiction to correct this error in the post-trial process by directing that the federal firearm prohibition be removed from the EOJ in this case.[5]

2. Both the Constitution and the plain meaning of 18 U.S.C. § 922 prevent application of the statute to A1C Dominguez-Garcia.

Nothing in A1C Dominguez-Garcia's record of trial indicates her conviction[6] qualifies as one of the nine categories listed in 18 U.S.C. § 922(g)(1)-(9). Even if a category does apply to A1C Dominguez-Garcia, she was not convicted of a violent offense. Therefore, the statute cannot be constitutionally applied to her.

A. Facially, the statute does not apply to A1C Dominguez-Garcia's conviction.

The plain language of 18 U.S.C. § 922(g)(1) requires a crime be punishable by imprisonment exceeding one year. At special court-martial, *no crime* is

[5] Otherwise, there is no due process for A1C Dominguez-Garcia within the military justice system for this unconstitutional deprivation of her Second Amendment rights. *See* Air Force Manual (AFMAN) 71-102, *Air Force Criminal Indexing*, dated July 21, 2020, Chapter 9 (revealing no "expungement" or "correction" process for erroneous firearm bars); *compare* R.C.M. 1111(c) *with* R.C.M. 1104 (showing no contemplation for correction of the EOJ with a post-trial motion).

[6] The only conviction at issue in this appeal is simple assault of an unloaded firearm; confinement for negligent dereliction is under one year no matter what, and thus 18 U.S.C. § 922(g)(1) cannot apply to that offense. *MCM*, pt. IV, ¶ 18.d.(3)(A).

punishable by over a year in confinement. 10 U.S.C. § 819(a). What constitutes a conviction of a "crime punishable by imprisonment for a term exceeding 1 year" is "determined in accordance with the law of the jurisdiction in which the proceedings were held." 27 C.F.R. 478.11; 18 U.S.C. § 921(20). Therefore, a conviction of a crime "punishable" by imprisonment for over a year is dictated by the jurisdiction of the court-martial, whether the court-martial is a general, special, or summary court-martial. 10 U.S.C. §§ 818, 819, 820. This interpretation reads the entire UCMJ together to inform whether 18 U.S.C. § 922(g) applies to a particular offense. Since A1C Dominguez-Garcia was tried at a special court-martial, her conviction does not trigger the "felony" firearms prohibition.

B. 18 U.S.C. § 922 is unconstitutional as applied to A1C Dominguez-Garcia because she committed a nonviolent offense.

Assuming 18 U.S.C. § 922(g)(1) does apply to crimes that carry a maximum punishment over one year but that are adjudicated at special courts-martial, A1C Dominguez-Garcia faces a lifetime firearms ban—despite her constitutional right to keep and bear arms—for a *nonviolent* offense. *See* U.S. CONST. amend. II. The distinction between violent and nonviolent offenses is important and lies deeply rooted in history and tradition. The Government cannot demonstrate that such a ban, even if it were limited temporally, is "consistent with the nation's historical tradition of firearm regulation." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022).

Evaluating 18 U.S.C. § 922(g)(1) in light of *Bruen*, the Third Circuit noted that the earliest version of the statute prohibiting those convicted of crimes punishable by more than one year of imprisonment, from 1938, "applied only to violent criminals." *Range v. AG United States*, 69 F.4th 96, 104 (3rd Cir. 2023), *petition for cert. filed*, No. 23-374 (U.S. Oct 5, 2023). It found no "relevantly similar" analogue to imposing lifetime disarmament upon those who committed nonviolent crimes. *Id*. at 103–05. Thus, the Third Circuit found the application of 18 U.S.C. § 922(g)(1) to a nonviolent offense, even though punishable by five years' confinement, unconstitutional as applied to that appellant. *Id.* at 98.

Similarly, the Fifth Circuit also held that 18 U.S.C. § 922(g)(8) was unconstitutional when it was applied to a nonviolent offense. *United States v. Rahimi*, 61 F.4th 443, 461 (5th Cir. 2023) (citation omitted), *cert. granted*, 143 S. Ct. 2688 (2023). The Fifth Circuit made clear, based on historical precedent, there are certain groups "whose disarmament the Founders 'presumptively' tolerated or would have tolerated." *Id*. at 452. The Founders would *not* have "presumptively" tolerated a citizen being stripped of his right to keep and bear arms after being convicted of a *nonviolent* offense. *Id.* As such, the Government failed to show "§ 922(g)(8)'s restriction of the Second Amendment right fits within our Nation's historical tradition of firearm regulation." *Id*. at 460.

The Government in *Range* and *Rahimi* failed to prove that our Nation's historical tradition of firearm regulation included nonviolent offenders. Similarly here, the Government cannot prove that barring A1C Dominguez-Garcia from ever possessing firearms for a nonviolent offense is constitutional. Moreover, the Government has also not shown a *lifetime* ban is consistent with the Nation's historical traditional of firearms regulation. *See Range*, 69 F.4th at 105 (noting even if a gun had been used in the commission of an offense, "government confiscation of the instruments of crime . . . differs from a status-based lifetime ban on firearm possession"). Thus, A1C Dominguez-Garcia's lifetime firearms ban for a nonviolent offense is not consistent with the nation's historical tradition of firearm regulation and this Court can and should correct this constitutional error.

WHEREFORE, Appellant respectfully requests this Court grant review.

Respectfully Submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Air Force Appellate Defense Division,
U.S.C.A.A.F. Bar No. 37280
1500 W. Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
samantha.castanien.1@us.af.mil

Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that I electronically filed a copy of the foregoing with the Clerk of Court on June 14, 2024, and that a copy was also electronically served on the Air Force Government Trial and Appellate Operations Division on the same date.

SAMANTHA M. CASTANIEN, Capt, USAF
Air Force Appellate Defense Division,
U.S.C.A.A.F. Bar No. 37280
1500 W. Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
samantha.castanien.1@us.af.mil

Counsel for Appellant

CERTIFICATE OF COMPLIANCE
WITH RULES 21(b), 24(b) & 37

This supplement complies with the type-volume limitation of Rules 21(b) and 24(b) because it contains 2,140 words.

This brief complies with the typeface and type-style requirements of Rule 37 because it has been prepared in a proportional typeface using Microsoft Word Version 2016 with Times New Roman 14-point typeface.

SAMANTHA M. CASTANIEN, Capt, USAF
Air Force Appellate Defense Division,
U.S.C.A.A.F. Bar No. 37280
1500 W. Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
samantha.castanien.1@us.af.mil

Counsel for Appellant

Appendix A

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

No. ACM S32694

UNITED STATES
Appellee

v.

Jennesis V. DOMINGUEZ-GARCIA
Airman First Class (E-3), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 11 October 2022

Military Judge: Mark W. Milam

Sentence: Sentence adjudged 14 April 2021 by SpCM convened at Robins Air Force Base, Georgia. Sentence entered by military judge on 30 April 2021: bad-conduct discharge, confinement for 7 days, reduction to E-1, and a reprimand.

For Appellant: Major David L. Bosner, USAF; Angel Gardner (Legal Extern).[1]

For Appellee: Lieutenant Colonel Thomas J. Alford, USAF; Lieutenant Colonel Matthew J. Neil, USAF; Major Brittany M. Speirs, USAF; Mary Ellen Payne, Esquire.

Before POSCH, RICHARDSON, and CADOTTE, *Appellate Military Judges*.

Senior Judge POSCH delivered the opinion of the court, in which Judge RICHARDSON and Judge CADOTTE joined.

---

[1] Ms. Gardner was supervised by an attorney admitted to practice before the court.

POSCH, Senior Judge:

It is not every day that an appellant asks this court to tell her what offense she pleaded guilty to at her court-martial. For the first time on appeal, Appellant contends that the military judge erred by conducting a providence inquiry for aggravated assault with a dangerous weapon instead of simple assault as charged. The Government concedes this was error. We agree and conclude that Appellant's pleas established the elements of simple assault and are provident. Because the military judge sentenced Appellant under a misapprehension that she was charged with a more serious offense, and that her guilty plea to the aggravating elements of that offense was provident when it was not, the sentence is set aside and the record returned to The Judge Advocate General for further proceedings consistent with this opinion.

I. BACKGROUND

The facts are undisputed. Two months after Appellant confronted another Airman by pointing a handgun at him at point-blank range, Appellant's squadron commander preferred three charges. One charge alleged that Appellant brought a firearm onto Robins Air Force Base (AFB), Georgia. A second alleged that Appellant communicated a threat to use that firearm to injure the victim. In a third charge arising from the same incident as the alleged threat, Appellant was accused of pointing an unloaded firearm at the victim. It is this third charge that we address in our decision.

After these incidents, Appellant was charged with dereliction of duty by "willfully" failing to refrain from bringing an unauthorized firearm onto Robins AFB (Charge I) and of communicating a threat to injure the victim with a firearm (Charge II) in violation of Articles 92 and 115, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 892, 915, respectively.[2] Appellant was also accused of assaulting the same victim by pointing an unloaded firearm at him (Charge III) in violation of Article 128, UCMJ, 10 U.S.C. § 928. On 22 December 2020, the convening authority referred the three charges without modification to trial by special court-martial. Among the referred charges, the Specification of Charge III alleged the following:

> In that AIRMAN FIRST CLASS JENNESIS V. DOMINGUEZ-GARCIA, United States Air Force, 53d Air Traffic Control Squadron, Robins Air Force Base, Georgia, did, at or near Robins

---

[2] References to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.).

> Air Force Base, Georgia, on or about 21 October 2020, assault Airman First Class [LA], to wit: offering to do bodily harm to him by intentionally pointing an unloaded firearm at him.

A. Court-Martial and Convening Authority's Decision on Action

When Appellant's court-martial convened on 12 April 2021, trial counsel announced the "general nature of the charges." As regards Charge III and its Specification, trial counsel stated that Appellant was accused of "assaulting" the victim "by intentionally pointing a[n] unloaded firearm at him."

Appellant elected trial by military judge alone and entered mixed pleas to the three offenses. As to Charge I and its Specification, Appellant pleaded guilty to bringing an unauthorized firearm onto Robins AFB, excepting the word "willfully," and substituting the word "negligently." The military judge accepted Appellant's pleas and, after a trial on this offense, Appellant was found guilty of negligent dereliction of duty in conformity with her plea. Appellant pleaded not guilty to Charge II and its Specification. Following trial counsel's unsuccessful attempt to add language to that specification, trial counsel announced that Charge II and its Specification were withdrawn and dismissed without prejudice, acknowledging that action was done with the convening authority's permission.[3] Appellant pleaded guilty to Charge III and its Specification, which the military judge, without objection and for the first time on the record, referred to as "the offense of *aggravated assault with a dangerous weapon* in violation of Article 128," UCMJ. (Emphasis added). The military judge accepted Appellant's pleas, and entered findings of guilty to Charge III and its Specification.

On 14 April 2021, the military judge sentenced Appellant to a bad-conduct discharge, confinement for seven days,[4] reduction to the grade of E-1, and a

---

[3] Trial counsel lined through "Charge II: Violation of the UCMJ, Article 115," writing, "Withdrawn and dismissed 12 April 2021," followed by her initials. Trial counsel also lined through the underlying specification, and did not renumber Charge III as Charge II, which was correct. Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 12.3.2.3. (18 Jan. 2019) (stating that after charges or specifications are withdrawn after arraignment when they have come to the attention of the military judge sitting alone, the remaining charges or specifications ordinarily are not renumbered).

[4] The military judge announced "no confinement" for Charge I and its Specification, and that Appellant was "[t]o be confined for seven days" "[f]or the Specification of *Charge II*," which had been withdrawn and dismissed two days earlier on 12 April 2021. (Emphasis added). No sentence to confinement was announced for Charge III and its Specification. Evidently, when announcing sentence, the military judge erroneously believed Charge "III" had been renumbered "II" after the communication of a threat offense was withdrawn and dismissed without prejudice. *Supra* n.3. This was error; however, Appellant claims no prejudice and we find none.

reprimand. During post-trial processing, Appellant waived her right to submit clemency matters and the convening authority did not disturb the sentence. The convening authority's Decision on Action Memorandum dated 29 April 2021, included language for the reprimand that had been adjudged. Among other things, the reprimand censured Appellant for having been convicted of *aggravated assault* with an unloaded firearm.

Appellant did not raise a motion under Rule for Courts-Martial (R.C.M.) 1104(b)(2)(B) to challenge the convening authority's decision or the reprimand specifically. *See also* R.C.M. 1104(b)(1)(F) (allowing post-trial motion to address "[a]n allegation of error in the convening authority's action"). On 30 April 2021, the military judge signed the entry of judgment (EoJ), which correctly stated the findings. In addition to specifying the wording of the reprimand, the sentence as entered by the military judge included a bad-conduct discharge, reduction to the grade of E-1, and seven days "[t]otal [c]onfinement."[5]

B. Appeal

Appellant initially filed a brief in support of three assignments of error with the court. In that pleading, Appellant asked whether (1) the military judge abused his discretion by accepting her pleas of guilty to Charges I and III and their Specifications because the military judge failed to establish an adequate factual or legal basis to support those pleas; and (2) trial defense counsel were ineffective, in four respects, by (a) failing to file a motion to suppress evidence derived from a search of her cell phone; (b) "advising [Appellant] to plead guilty when she was not, allowing her to plead guilty when she was not, and failing to file the appropriate motions and make appropriate legal arguments to win the case;" (c) failing to elicit or offer character evidence in presentencing; and (d) failing to submit post-trial matters for the convening authority's consideration. In addition to these issues, Appellant claimed that (3) the sentence, which included a bad-conduct discharge, was inappropriately severe.

After briefing was complete, Appellant moved for leave to file three supplemental assignments of error. For the first time, Appellant alleged that the military judge and counsel for both parties misapprehended the offense that the

[5] Appellant contends that the EoJ repeats an error in the Statement of Trial Results (STR). Instead of stating "0" days of confinement for the Specification of Charge I, "N/A" was entered, implying perhaps that no confinement could be adjudged. As observed *supra* n.4, a sentence of "no confinement" was imposed for this offense. Assuming error, we find relief is not warranted because the EoJ correctly states, "Total Confinement: 7 days." We reach this conclusion because *in this case* "N/A" where it appears after the Specification of Charge I in the STR and EoJ can be understood to mean no term of confinement was adjudged for this offense.

Government alleged in Charge III and its Specification. Appellant claimed that mistake "endured through the pendency of the court-martial."

We granted Appellant's motion, and the three supplemental assignments of error are before the court. In that pleading, Appellant asked whether (4) the court-martial had jurisdiction to accept a guilty plea, enter findings, and adjudge a sentence for aggravated assault with a dangerous weapon when the convening authority referred a charge and specification of simple assault with an unloaded firearm; (5) the military judge committed reversible error when he advised Appellant she was charged with aggravated assault with a dangerous weapon and provided the associated elements and definitions for a crime not charged; and (6) trial defense counsel were ineffective, in three additional respects, for failing do all of the following: (a) object to the military judge advising Appellant in the guilty-plea session as to a crime not charged, thereby permitting the military judge to convict Appellant of, and sentence Appellant for, a more serious crime than referred; (b) object to the trial counsel's argument that Appellant had been convicted of aggravated assault with a dangerous weapon; and (c) object to the convening authority's reprimand, which conveyed that Appellant had been convicted of aggravated assault with a dangerous weapon.

Although not specifically identified as an assignment of error, Appellant makes a point in her brief in support of her supplemental assignments of error that we find convincing. In that brief Appellant asserts "that the convening authority referred a charge and specification of simple assault with an unloaded weapon," but she "was sentenced for the more serious crime of aggravated assault with a dangerous weapon." Accordingly, in this opinion we examine Appellant's claim that she was prejudiced because the military judge misapprehended the offense alleged in Charge III and its Specification.

II. DISCUSSION

We have reviewed this unusual record carefully and conclude that none of the assignments of error are reason to invalidate the providence of Appellant's pleas of guilty or the findings as entered.[6] For this reason, we affirm the

[6] Appellant's assignments of error are either without merit or mooted by our decision that finds Appellant was charged and convicted of simple assault. In this regard, assignments of error (1), (2)(a) and (b), (4), (5), and (6)(a)—to the extent Appellant claims that deficient representation permitted the military judge to convict Appellant of an offense that was not charged and more serious than referred—do not require discussion or warrant relief. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987). At the same time, assignments of error (2)(c) and (d), (3), (6)(a)—to the extent Appellant

findings. Nonetheless, with respect to Charge III and its Specification, we agree with Appellant that the military judge erred in sentencing Appellant for a more serious crime than she was charged with committing. The court finds error materially prejudicial to a substantial right of Appellant occurred in sentencing. For this reason, we set aside the sentence.

A. Providence of Guilty Pleas to Charge III and its Specification

The charge sheet shows that Appellant was accused in the Specification of Charge III with simple assault with an unloaded firearm, and not aggravated assault with a dangerous weapon. As noted above, the Government concedes this point. We agree for two reasons.

First, Congress intended an aggravated assault with a dangerous weapon would require both "intent to do bodily harm" and "a dangerous weapon." Article 128(b), UCMJ, 10 U.S.C § 928(b). Neither is expressly alleged in the specification to which Appellant entered a plea of guilty.[7] Unlike aggravated assault, simple assault with an unloaded firearm does not require proof that an accused specifically intended bodily harm or used a dangerous weapon. *Compare Manual for Courts-Martial, United States* (2019 ed.) (*MCM*), pt. IV, ¶ 77.b.(4)(a) (aggravated assault with a dangerous weapon), *with MCM*, pt. IV, ¶ 77.b.(1) (simple assault).

Second, an unloaded handgun is not a dangerous weapon within the meaning of Article 128, UCMJ, unless it is "used in a matter capable of inflicting death or grievous bodily harm." *MCM*, pt. IV, ¶ 77.c.(5)(a)(iii), *Dangerous weapon*. Here, Appellant was accused of "pointing an unloaded firearm." In *United States v. Davis*, our superior court concluded that "[t]he President intended for a weapon to be considered dangerous only if loaded." 47 M.J. 484, 486 (C.A.A.F. 1998) (observing "[t]he Manual has indicated that an unloaded firearm is not a dangerous weapon since 1951" and "[t]here is no indication that the President's explanation of aggravated assaults contradicts the Code in any way"); *see also MCM*, pt. IV, ¶ 77.d.(1)(b) (establishing maximum punishment for "simple assault" committed with an "unloaded firearm"). For these reasons, when the military judge called upon Appellant to plead, Appellant entered a plea of guilty to simple assault as charged.

Appellant pleaded guilty to Charge III and its Specification without entering into stipulations of fact with trial counsel, and without entering into a plea

---

claims that deficient representation allowed the military judge to sentence Appellant for a more serious crime than referred, and (6)(b) and (c) are mooted by our decision.

[7] *Cf. MCM*, pt. IV, ¶ 77.e.(8) (including "intent to inflict bodily harm," and suggesting inclusion of "loaded firearm," in sample specification for aggravated assault with a dangerous firearm).

agreement with the convening authority.[8] Early in the providence inquiry, the military judge advised Appellant of the two elements of simple assault with an unloaded firearm. However, he erred by including a third and fourth element that were essential only if Appellant was charged with aggravated assault with a dangerous weapon. The military judge explained to Appellant that "by pleading guilty . . . you are admitting that the following elements are true and accurately describe what you did." He then recited two elements that were essential, and a third and fourth element that were not:

> One, that at or near Robins Air Force Base, Georgia on or about 21 October 2020, you assaulted [LA] by offering to do bodily harm to him. Two[,] that you did so by intentionally pointing at [LA] with a certain weapon, to wit: a unloaded firearm. Three[,] that you intended to do bodily harm. And four[,] that the weapon was a dangerous weapon.

The military judge then correctly described the elements of simple assault in much the same way as they are explained in the *Manual for Courts-Martial*. He explained that "[a]n assault[ ] is an unlawful offer made with force or violence to do bodily harm to another whether or not the offer is consummated." *See MCM*, pt. IV, ¶ 77.c.(2)(a), *Definition of assault*. "An offer to do bodily harm is unlawful if it is done without legal justification or excuse and without the lawful consent of the victim." *See id.* "An offer[ ] to do bodily harm is an unlawful demonstration of violence by an intentional act or omission which creates in the mind of another a reasonable apprehension of receiving immediate bodily harm." *See MCM*, pt. IV, ¶ 77.c.(2)(b)(ii), *Offer-type assault*. "The use of threatening words alone does not constitute an assault, however if the threatening words are accompanied by a menacing act or gesture there may be an assault, since the combination constitutes a demonstration of violence." *See MCM*, pt. IV, ¶ 77.c.(2)(c)(ii), *Threatening words*. The military judge explained, "Bodily harm means an offensive touching of another however slight." *See MCM*, pt. IV, ¶ 77.c.(1)(a).

During the providence inquiry, Appellant explained in a narrative how she confronted the victim in his dorm room about rumors he was spreading about her. In her telling, "I just snapped, pulled out the gun from my purse, and I waived [sic] the gun across my chest and my body before setting it down on my lap. The gun was pointed at [the victim] but my finger was not on the trigger and the safety was on." Appellant told the military judge that when she pointed

---

[8] When called upon to plead, trial defense counsel spoke for Appellant and stated, "To the Charge and its Specifications, III: Guilty." The military judge acknowledged that Appellant was "plead[ing] guilty to Charge III and its Specification." Appellant claims no prejudice from the irregularity in the pleas as entered for her and we find none.

the gun she said, "I'll show you what a crazy b[**]ch is." Appellant acknowledged that the victim put both hands up, and she further told the military judge "it was obvious that he was frightened through his reaction and his body language." The military judge asked, "So why did you do it?" Appellant replied, "To scare him in that instance." Appellant acknowledged she intended to point the gun and had no legal authorization to do so. Appellant told the military judge the gun was unloaded.

"A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion." *United States v. Forbes*, 78 M.J. 279, 281 (C.A.A.F. 2019) (quoting *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996)). In reviewing the providence of a plea, a military judge abuses his discretion when there is "a substantial basis in law or fact for questioning the plea." *United States v. Inabinette*, 66 M.J. 320, 321–22 (C.A.A.F. 2008) (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). The military judge's legal conclusion about the providence of the plea is reviewed de novo. *United States v. Harris*, 61 M.J. 391, 398 (C.A.A.F. 2005). An appellant bears the burden of establishing that the record shows "a substantial basis in law or fact to question the plea." *United States v. Phillips*, 74 M.J. 20, 21–22 (C.A.A.F. 2015).

We turn then to the military judge's acceptance of Appellant's pleas. Appellant's providence inquiry established the two elements of simple assault with an unloaded firearm. We conclude that the military judge did not abuse his discretion in accepting Appellant's plea to the charged offense and had no basis for rejecting it. We reach this conclusion notwithstanding the military judge's error in believing that Appellant was charged with the greater offense of aggravated assault with a dangerous weapon. Although the military judge erred by conducting a colloquy on elements of aggravated assault with a dangerous weapon, Appellant has not met her burden to show a substantial basis to question her pleas to Charge III and its Specification.[9] *Phillips*, 74 M.J. at 21–22.

B. Sentencing

Appellant correctly points out that it was the military judge who first labeled Charge III as an aggravated assault with a dangerous weapon, and no one corrected him. During sentencing proceedings, the sentencing authority must consider, among other things, "the nature and circumstances of the offense." R.C.M. 1002(f)(1). It may seem as though that happened here, except

[9] The STR and EoJ correctly record the offense code to be reported to the Defense Incident-Based Reporting System (DIBRS) as "128-A" for simple assault. A DIBRS code is neither a finding nor part of a sentence, *United States v. Lepore*, 81 M.J. 759, 762–63 (A.F. Ct. Crim. App. 2021) (en banc), but is instructive on the issue at hand.

the military judge believed, erroneously, that he was sentencing Appellant for aggravated assault with a dangerous weapon.

The military judge compounded this error when he found both elements of the greater offense were satisfied by Appellant's responses during the providence inquiry. Yet, neither element was shown by that inquiry. Appellant's responses established that she intended only to frighten the victim, and that her unloaded handgun could have been dangerous if the facts were different:

> Q [MJ]: Okay so from what you saw with [the victim] it caused him to have apprehension as well?
>
> A [Appellant]: Yes, Your Honor. Because he didn't know that the gun was unloaded.
>
> Q: Right. *So why did you do it?*
>
> A: *To scare him in that instance.*
>
> Q: . . . [T]he reason I'm asking is because *you have to intend to do the bodily harm*. So if he has a reasonable apprehension that you're about to do something to him even if you really know you can't do it, in other words you can't shoot him, *but you intended to scare him*, *to me that shows that you intended to do bodily harm to him by scaring the crap out of him*. Just to use plain language. Is that, is that accurate? Or inaccurate?
>
> A: Yes, Your Honor.[10]
>
> Q: Okay, okay. And you would agree that a firearm even if it's unloaded *is still a dangerous weapon? It certainly can be,* right? Do you agree?
>
> A: Yes, Your Honor.
>
> Q: I mean in other words, you *could* put a bullet in it.
>
> A: Yes, Your Honor.
>
> Q: *It, it can be* a dangerous weapon very easily, right? *I know you didn't have bullets*. What I'm . . . trying to see is if you understand that *you had a dangerous weapon that you were pointing at him*.

[10] We consider Appellant's single affirmative response given to questions asked in the alternative to be non-responsive. We give it no weight.

> A: Yes, Your Honor.[11]
>
> Q: Okay. *It doesn't mean that it's being used as a dangerous weapon at that particular moment*. In other words, there wasn't a round in the chamber, *the only thing you probably could've done with it at 15 feet away is throw it at him*. Right?
>
> A: Yes, Your Honor.

(Emphasis added).

We consider Appellant's responses "as well any inferences that may reasonably be drawn" from what she said. *United States v. Carr*, 65 M.J. 39, 41 (C.A.A.F. 2007). As the military judge understood it, Appellant "intended to do bodily harm" to the victim "by scaring the crap out of him." This is not what Appellant said and the inference the military judge made in that regard was unfounded. We agree with Appellant that the providence inquiry shows she intended psychological harm, but the element of specific intent to do "[b]odily harm" for aggravated assault requires something else, specifically that Appellant intended "an offensive touching of another, however slight." *MCM*, pt. IV, ¶ 77.c.(1)(a). On this record, it was unreasonable for the military judge to conclude that Appellant specifically intended bodily harm.

We likewise agree with Appellant's point that, on the question whether the handgun she used was a dangerous weapon, the military judge "grounded his questions in hypothetical possibilities, even remarking that she could load a bullet in a different scenario but, given the facts as they were, all she could have done is throw[n] [the handgun] at [the victim] from [some] distance." Appellant's plea of guilty established that she "intentionally point[ed] an unloaded firearm," and not that the handgun was a dangerous weapon because she *could* have thrown it at the victim or chambered a round.

In line with the providence inquiry, we would have to presume that the military judge proceeded to the sentencing phase of court-martial with the unfounded belief that Appellant intended bodily harm to the victim and that she used a dangerous weapon in the commission of the charged offense. In doing so, the military judge undermined a fundamental right of Appellant to due consideration of the nature and circumstances of the lesser offense that the Government charged. Even during presentencing proceedings, the military judge operated under the same misapprehension that clouded the case since the plea inquiry two days earlier. In that regard, trial counsel argued without

---

[11] Appellant's affirmative response was ambiguous. She may have agreed that the handgun could have been a dangerous weapon or that it was dangerous. Alternatively, her response might have been a polite acknowledgement that she understood the military judge had a purpose in asking the question.

objection for a lengthy sentence because "the accused committed an *aggravated assault* with a firearm." (Emphasis added).

Turning to the question of prejudice, we believe the correct standard is to ask whether the military judge's error "substantially influence[d] Appellant's adjudged sentence." *United States v. Edwards*, 82 M.J. 239, 247 (C.A.A.F. 2022). We believe that it did, and we agree with Appellant that the military judge's errors permeated sentencing. At the outset, we note that the military judge imposed no confinement for the offense of negligent dereliction of duty and minimal confinement for Charge III and its Specification. The Government notes Appellant received a sentence of just seven days confinement and a bad conduct discharge. The Government argues that Appellant's punitive exposure was unchanged because the maximum punishment for both offenses was the same without regard to forum[12] and because the special court-martial forum limited her punitive exposure to one year of confinement and a bad-conduct discharge.

We are not persuaded by these arguments. The military judge imposed a sentenced for an offense more serious than Appellant was charged with committing. He erred by evaluating Appellant's conduct in reference to the nature and circumstances of an offense more aggravating than was shown by her providence inquiry. R.C.M. 1002(f)(1). He sentenced Appellant for matters in aggravation that were not shown by that inquiry or the evidence. Under these circumstances, we are compelled to conclude that these errors substantially influenced the sentence he determined was appropriate.[13]

We have broad discretion to reassess a sentence to cure error. *United States v. Winckelmann*, 73 M.J. 11, 15–16 (C.A.A.F. 2013). Our discretion weighs against reassessment when appellate review results in a dramatic change to the penalty landscape, the gravamen of the criminal conduct is changed, or aggravating circumstances are found inadmissible or irrelevant. *Id.* We may reassess a sentence only if we are able to reliably determine that, absent the error, the sentence would have been "at least of a certain magnitude." *United States v. Harris*, 53 M.J. 86, 88 (C.A.A.F. 2000) (citation omitted). Applying the *Winckelmann* factors, we are not convinced that we can reliably make such a

---

[12] The maximum authorized punishment is the same. *Compare MCM*, pt. IV, para. 77.d.(1)(b) (simple assault with an unloaded firearm) *with MCM*, pt. IV, para. 77.d.(3)(a)(iii) (aggravated assault with a dangerous weapon when not committed under circumstances specified in subparagraphs (i) and (ii)).

[13] To be clear, Appellant's sentence is incorrect in law and fact. Article 66(d)(1), 10 U.S.C. § 866(d)(1). Our decision today does not reach the question whether, on this record, a sentence that includes seven days' confinement and a punitive discharge should not be approved because it may be inappropriately severe.

determination. *Winckelmann*, 73 M.J. at 15–16. In view of the military judge's fundamental misapprehension of law and finding matters in aggravation unsupported by the record, "the only fair course of action is to have [Appellant] resentenced at the trial level." *Harris*, 53 M.J. at 88 (quoting *United States v. Peoples*, 29 M.J. 426, 429 (C.M.A. 1990)).

III. CONCLUSION

The findings are correct in law and fact. Accordingly, the findings as entered are **AFFIRMED**. The sentence is **SET ASIDE** for error materially prejudicial to a substantial right of Appellant. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). The record is returned to The Judge Advocate General for further proceedings consistent with this opinion. A rehearing is authorized. Article 66(f)(2), UCMJ, 10 U.S.C. § 866(f)(2). Thereafter, the record will be returned to the court to complete appellate review under Article 66(d), UCMJ.

FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

Appendix B

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

No. ACM S32694 (f rev)

UNITED STATES
Appellee

v.

Jennesis V. DOMINGUEZ-GARCIA
Airman First Class (E-3), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Upon Further Review

Decided 31 May 2024

Military Judge: Mark W. Milam; Tyler B. Musselman (remand).

Sentence: Sentence adjudged 14 April 2021 by SpCM convened at Robins Air Force Base, Georgia. Sentence entered by military judge on 30 April 2021: Bad-conduct discharge, confinement for 7 days, reduction to E-1, and a reprimand. Sentence reentered on 14 September 2023: no punishment.

For Appellant: Major David L. Bosner, USAF; Captain Samantha M. Castanien, USAF; Megan P. Marinos, Esquire; Angel Gardner (Legal Extern).[*]

For Appellee: Lieutenant Colonel Thomas J. Alford, USAF; Lieutenant Colonel Matthew J. Neil, USAF; Major Brittany M. Speirs, USAF; Mary Ellen Payne, Esquire.

Before RICHARDSON, MASON, and KEARLEY, *Appellate Military Judges*.

---

[*] Ms. Gardner was supervised by an attorney admitted to practice before the court.

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.

PER CURIAM:

Appellant's case is before us a second time. In an earlier opinion, this court affirmed the findings but set aside the sentence, remanded the case to The Judge Advocate General, and authorized a rehearing. *United States v. Dominguez-Garcia*, No. ACM S32694, 2022 CCA LEXIS 582 (A.F. Ct. Crim. App. 11 Oct. 2022) (unpub. op.). On 17 November 2022, The Judge Advocate General returned the case to the convening authority for further processing consistent with our opinion. On 29 August 2023, the convening authority determined a rehearing on sentence was impracticable, and approved a sentence of no punishment.

After remand, Appellant raises one issue: "whether the misapplication of 18 U.S.C. § 922 to Appellant unconstitutionally deprived her of her right to bear arms based on her nonviolent conviction at a special court-martial." We have carefully considered this issue, and determine no discussion or relief is warranted. *United States v. Guinn,* 81 M.J. 195, 204 (C.A.A.F. 2021) (citing *United States v. Matias,* 25 M.J. 356, 361 (C.M.A. 1987)); *see United States v. Vanzant*, ___ M.J. ___, No. ACM 22004, 2024 CCA LEXIS 215, at * 28 (A.F. Ct. Crim. App. 28 May 2024) ("The firearms prohibition remains a collateral consequence of the conviction, rather than an element of the findings or sentence, and is therefore beyond our authority to review.").

The court previously affirmed the findings. The sentence as entered on 14 September 2023 is correct in law, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(d), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the sentence is **AFFIRMED**.

FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

Appendix C

United States v. Macias

United States Navy-Marine Corps Court of Criminal Appeals

October 13, 2022, Decided

No. 202200005

Reporter
2022 CCA LEXIS 580 *

UNITED STATES, Appellee v. NATHANIEL R. MACIAS, Lance Corporal (E-3), U.S. Marine Corps, Appellant

Notice: THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.

Prior History: Appeal from the United States Navy-Marine Corps Trial Judiciary. Military Judge: John P. Norman. Sentence adjudged 21 September 2021 by a special court-martial convened at Twentynine Palms, California, consisting of a military judge sitting alone. Sentence in the Entry of Judgment: reduction to E-1, confinement for one-hundred-and-fifty days, and a bad-conduct discharge.[1] **[*1]** .

Counsel: For Appellant: Lieutenant Megan E. Horst, JAGC, USN.

Judges: Before DEERWESTER, HACKEL, and KIRKBY Appellate Military Judges.

Opinion

PER CURIAM:

Appellant was convicted, consistent with his pleas, of conspiracy to disobey a lawful general order, failure to obey a lawful general order, and assault consummated by battery in violation of Articles 81, 92, and 128, Uniform Code of Military Justice [UCMJ].[2] Appellant does not assert any assignments of error (AOEs). However, on 23 August 2022, Appellant submitted a Motion to Correct Error in the Record arising from an alleged error regarding firearm possession in the Statement of Trial Results, which we granted. We take action arising from Appellant's motion in our decretal paragraph.

I. Background

The Gun Control Act of 1968 [GCA] governs the impact of criminal convictions on the ability to possess firearms and ammunition.[3] Under **[*2]** section 922(g) of the GCA, it becomes unlawful for a person to receive, possess, ship, or transport firearms or ammunition if that person has been convicted of any offense punishable by imprisonment for a term exceeding one year.[4] The prohibition also extends to persons who receive a dishonorable discharge or dismissal at a general court-martial, as well as any person convicted of a domestic violence offence; unlawful users of controlled substances; and fugitives from justice.[5] Under the statute, convictions adjudicated by a special court-martial do not count as offensives punishable by imprisonment for a term exceeding one year because of the jurisdictional limitations attached to that forum.[6]

II. Discussion

A. Record Correction Pursuant to *United States v. Crumpley*

Whether a record of trial is accurate and complete is a

[1] Appellant was credited with one-hundred-and-eighty-three days of pretrial confinement credit.

[2] 10 U.S.C. §§ 881, 892, 982.

[3] 18 U.S.C. § 921 *et seq.*, as amended.

[4] 18 U.S.C. § 922(g) (2022).

[5] *Id.*

[6] 27 C.F.R. § 478.11 (2022).

question we review de novo.[7] An appellant is entitled to have the official record accurately reflect what happened in the proceedings.[8] Appellant submits that the Statement of Trial Results in his case does not accurately reflect the proceedings because it incorrectly indicates that he is subject to the ban effectuated by the GCA. The Government concedes that "section G of **[*3]** the Statement of Trial Results incorrectly states that Appellant's case triggers a firearm possession prohibition in accordance with 18 U.S.C. § 922."[9]

Because Appellant was convicted by a special-court martial, received a bad conduct discharge (vice a dishonorable discharge), and was not convicted of one of the aforementioned triggering offenses under the GCA, we agree that the Statement of Trial Results is inaccurate. We find that the inclusion of this error in the post-trial processing paperwork did not affect Appellant's substantive rights at trial, since no prejudice was alleged or is apparent.[10] However, we take action in our decretal paragraph to ensure that this administrative error does not affect Appellant's rights in the future.

III. Conclusion

After careful consideration of the record, we have determined that the findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant's substantial rights occurred.[11]

However, the record of trial does not accurately reflect the disposition of Appellant's court-martial.[12] Although we find no prejudice, Appellant is entitled to have court-martial records that correctly reflect the content of his proceeding.[13] In accordance **[*4]** with Rule for Courts-Martial 1111(c)(2), we modify section G of the Statement of Trial Results and direct that the erroneous indication that Appellant is subject to the ban imposed by the GCA be removed and section G be corrected to accurately reflect that Appellant is **not** subject to the weapons and ammunition controls imposed by the GCA.

The findings and sentence are **AFFIRMED**.

End of Document

[7] *United States v. Crumpley*, 49 M.J. 538 (N-M Ct. Crim. App. 1998).

[8] *Crumpley*, 49 M.J. at 539.

[9] Government's Consent Motion for Leave to File and Motion to Correct Error in the Record at 2.

[10] *Crumpley*, 49 M.J. at 539.

[11] Articles 59 & 66, Uniform Code of Military Justice, 10 U.S.C. §§ 859, 866.

[12] The record of trial contains two charge sheets. The first, preferred on March 2, 2021 and referred on April 1, 2021, has been erroneously included and should be removed.

[13] *Crumpley*, 49 M.J. at 539.

United States v. Shaffer

United States Army Court of Criminal Appeals

December 15, 2021, Decided

ARMY 20200551

Reporter
2021 CCA LEXIS 682 *

UNITED STATES, Appellee v. Sergeant SHAWN E. SHAFFER, United States Army, Appellant

Prior History: [*1] Headquarters, 82d Airborne Division. Amy S. Fitzgibbons, Military Judge. Colonel Jeffrey S. Thurnher, Staff Judge Advocate.

Counsel: For Appellant: Colonel Michael C. Friess, JA; Lieutenant Colonel Dale C. McFeatters, JA; Major Joyce C. Liu, JA; Captain Andrew R. Britt, JA (on brief and reply brief).

For Appellee: Colonel Christopher B. Burgess, JA; Lieutenant Colonel Craig J. Schapira, JA; Major Mark T. Robinson, JA; Captain Jennifer A. Sundook, JA (on brief).

Judges: Before BURTON, FLEMING, and PARKER, Appellate Military Judges.

Opinion

DECISION

Per Curiam:

On consideration of the entire record, we hold the findings of guilty and the sentence, as entered in the Judgment, correct in law and fact. Accordingly, those findings of guilty and the sentence are AFFIRMED.[1][2]

[1] Appellant claims the government's dilatory post-trial processing of his case warrants relief. We disagree. The total numbers of days from adjournment to docketing was 277 days. The government provides no explanation for the delay in processing a 143-page transcript. Although we do not condone the government's lack of diligence in the post-trial processing of appellant's case, we do not find the delay warrants relief as appellant has not demonstrated prejudice. *See Barker v. Wingo*, 407 U.S. 514, 530-32, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972) (establishing the four-factor balancing test to determine whether post-trial delay constitutes **[*2]** a due process violation); *see also Toohey v. United States*, 60 M.J. 100, 102 (C.A.A.F. 2004) (adopting the *Barker* four-factor balancing test). Furthermore, we find the sentence to be appropriate as adjudged. Article 66(d), UCMJ. *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002). Staff Judge Advocates are reminded of the need for an explanation when they have failed to comply with post-trial processing timelines. *See United States v. Brown*, 81 M.J. 507, 511 (Army Ct. Crim. App. 2021) ("We reiterate that, just as it was under the old procedures, staff judge advocates are advised to explain post-trial processing delays in excess of the 150-day standard adopted in this opinion.")

[2] The Statement of Trial Results is corrected as follows: 1) Block 29, concerning DNA processing in accordance with 10 U.S.C. §1565, is changed to reflect "Yes;" 2) Block 31, concerning 18 U.S.C. § 922 (g)(1), is changed to reflect "No;" and 3) the "Findings" section is amended to add Charge III, alleging an offense under Article 112a, Uniform Code of Military Justice, with a specification which reads, "In that [appellant], U.S. Army, did, at or near Fort Bragg, North Carolina, on or about 31 May 2020, wrongfully possess some cocaine," and with the Plea as "Not Guilty" and the Finding/Disposition as "Dismissed."