IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,
Appellee,

v.

MICHAEL A. VALENTIN-ANDINO
Airman First Class (E-3),
United States Air Force,
Appellant.

USCA Dkt. No. 24-0208/AF

Crim. App. Dkt. No. ACM 40185

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BRIEF ON BEHALF OF APPELLANT

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STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (Air Force Court) had jurisdiction over this matter under Article 66, Uniform Code of Military Justice (UCMJ).[1] 10 U.S.C. § 866. This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

RELEVANT AUTHORITIES

The UCMJ provides:

Article 58b(a), UCMJ, 10 U.S.C. § 858b(a) (2019): (1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under

[1] Unless otherwise noted, all references in this filing to the UCMJ, Military Rules of Evidence, and Rules for Courts-Martial are to the versions in the *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*).

section 857 of this title (article 57) and may be deferred as provided by that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period. (2) A sentence covered by this section is any sentence that includes (A) confinement for more than six months or death; or (B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

Article 66(c), UCMJ, 10 U.S.C. § 866(c) (2000): In a case referred to it, the Court of Criminal Appeals may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2019): Cases appealed by accused. In any case before the Court of Criminal appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the

Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2) (2019): Error or excessive delay. In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c).

STATEMENT OF THE CASE

A panel of officer and enlisted members sitting as a general court-martial convicted Airman First Class (A1C) Michael A. Valentin-Andino, contrary to his pleas, of one charge and specification of sexual assault, in violation of Article 120, UCMJ, 10 U.S.C. § 920. JA at 2, 44. The members sentenced A1C Valentin-Andino to a dishonorable discharge, confinement for 90 days, and a reduction in grade to E-1. JA at 45.

After initial review, the Air Force Court found the record of trial was substantially incomplete. JA at 2 (citing *United States v. Valentin-Andino*, 83 M.J. 537, 544 (A.F. Ct. Crim. App. 2023)). The Air Force Court remanded A1C Valentin-Andino's case to address the errors. JA at 2. Upon further review, the Air Force

Court granted sentencing relief for unreasonable post-trial delay by modifying A1C Valentin-Andino's reduction in grade from E-1 to E-2. JA at 3.

STATEMENT OF FACTS

A1C Valentin-Andino was sentenced on May 20, 2021. JA at 45-46. The record of trial was initially docketed with the Air Force Court on October 6, 2021. *Valentin-Andino*, 83 M.J. at 540. On October 31, 2022, A1C Valentin-Andino filed his first assignment of errors brief with the Air Force Court. The Air Force Court issued an initial opinion on January 30, 2023, finding that the record was substantially incomplete. *Valentin-Andino*, 83 M.J. at 541, 544. The Air Force Court remanded the record of trial for new post-trial processing and correction on the same day. *Id*. at 544.

Eighty days later, on April 20, 2023, the record was re-docketed with the Air Force Court. JA at 20. However, the record was still incomplete; the record did not include documentation showing that the convening authority served A1C Valentin-Andino with victim matters nor did it include A1C Valentin-Andino's deferment request to the convening authority. JA at 7. The Air Force Court issued a Show Cause Order on September 28, 2023—161 days after the case was re-docketed—demanding that the Government show "good cause as to why the [Air Force Court] should not remand the record for correction again or take other corrective action." JA at 7, 19.

On October 10, 2023, the Government responded with a declaration from the Chief of Military Justice where A1C Valentin-Andino was court-martialed. JA at 21-23, 30. That declaration averred that the Government sent a request for information on October 5, 2023, and the Chief of Military Justice was able to locate the missing documents "in email traffic." JA at 30. Following this answer, neither party filed additional matters with the Air Force Court. Nevertheless, it took the Air Force Court 241 days from receipt of the last filing to issue its opinion. *Compare* JA at 21 (showing a filing date of October 10, 2023, for the United States's Answer to Show Cause Order), *with* JA at 1 (showing an issuance date of June 7, 2024, for the Air Force Court opinion).

From the date of sentencing to the date the Air Force Court issued its opinion, 1,114 days had elapsed.[2] From the date of initial docketing with the Air Force Court to the date of the opinion, 975 days elapsed.

The Air Force Court found the post-trial delay was unreasonable and that relief was warranted. JA at 10. Specifically, the Air Force Court concluded that the Government's inaction amounted to "gross indifference to post-trial processing." JA at 10. The court went further, articulating "institutional neglect" on the part of the Government toward post-trial processing; a neglect that is "happening at an alarming

[2] Through no fault of A1C Valentin-Andino, his appellate counsel filed ten enlargements of time prior to filing his initial brief with the Air Force Court.

frequency in the Air Force." JA at 10. The Air Force Court surmised that they had remanded at least 20 cases for incomplete records in fiscal year 2023 alone. JA at 11. Accordingly, the Air Force Court provided relief by adjusting A1C Valentin-Andino's reduction by one grade (E-1 to E-2). JA at 12. The Air Force Court did not explain how adjusting the reduction by one grade provided A1C Valentin-Andino with "meaningful relief."

SUMMARY OF ARGUMENT

"Appropriate relief" under Article 66(d)(2), UCMJ, must be meaningful. This conclusion is supported by three things. First, the plain language of the statute, which demonstrates that "appropriate" must be "meaningful" because the definitions of both require that any adjudged relief have a "particular" purpose. This is further supported by *United States v. Pflueger*, 65 M.J. 127 (C.A.A.F. 2007), where this Court reasoned that "appropriate relief" must be meaningful. Second, at least three canons of statutory construction—(1) the prior construction canon; (2) the presumption against implied repeal; and (3) the canon of imputed common law meaning—show that Congress incorporated this Court's "meaningful" jurisprudence when it created Article 66(d)(2), UCMJ. Third, the Courts of Criminal Appeals (CCAs) seem to agree that Article 66(d)(2), UCMJ, is synonymous with this Court's *Tardif* precedent.

But, even if this Court determines that Article 66(d)(2), UCMJ, does not require meaningful relief, meaningful relief is nevertheless required because the 2019 version of Article 66(d)(1), UCMJ, applies. The 2019 version of Article 66(d)(1), UCMJ, mirrors the 2000 version of Article 66(c), UCMJ. The latter was the basis for this Court's *Tardif* precedent—to include *Pflueger*'s requirement for meaningful relief. Since the same statutory language applies to this case, the Air Force Court was required to award meaningful relief. Because the Air Force Court's relief had no practical impact on A1C Valentin-Andino, the relief is meaningless, and remand is appropriate.

ARGUMENT

I. "Appropriate Relief" for excessive post-trial delay under Article 66(d)(2), UCMJ, requires "meaningful relief."

A. Standard of Review

Questions of statutory interpretation are reviewed de novo. *United States v. Flores*, 84 M.J. 277, 280 (C.A.A.F. 2024).

B. The "appropriate relief" language in Article 66(d)(2), UCMJ, has its origins in this Court's precedence, which requires relief be meaningful.

In 2002, this Court held that "an accused has a [statutory] right to timely review of the findings and sentence." *United States v. Tardif*, 57 M.J. 219, 222

(C.A.A.F. 2002) (citing Article 66(c), UCMJ, 10 U.S.C. § 866(c) (2000)).[3] Under Article 66(c), CCAs had authority to "tailor an appropriate remedy" for excessive post-trial delay. *Tardif*, 57 M.J. at 225. Then, in 2007, this Court held that when a CCA determines *Tardif* relief is warranted the prescribed relief must be "meaningful." *Pflueger*, 65 M.J. at 130-31.

A decade later, Congress passed the Military Justice Act of 2016. *United States v. Allison*, No. 201800251, 2021 CCA LEXIS 605, at *13 n.39 (N-M. Ct. Crim. App. Nov. 16, 2021). This Act "amended the UCMJ such that Article 66(d)(2), UCMJ, specifically invests the [CCAs] with authority to grant 'appropriate relief' for . . . excessive delay." *Allison*, 2021 CCA LEXIS 605, at *13 n.39; *see* 10 U.S.C. § 866(d)(2) (prescribing that a "[CCA] may provide appropriate relief if the accused demonstrates . . . excessive delay in the processing of the court-martial after the judgment was entered into the record").

"Appropriate relief" in Article 66(d)(2), UCMJ, has its origins in this Court's *Tardif* precedent. That precedent required "appropriate relief" be meaningful. As

[3] The version of Article 66(d)(1), UCMJ, applicable to this case mirrors the version of Article 66(c), UCMJ, analyzed in *Tardif*. *Compare* 10 U.S.C. § 866(d)(1) (2019) ("The [CCA] may affirm only . . . the sentence or such part or amount of the sentence, as the [CCA] finds correct in law and fact and determines . . . should be approved."), *with* 10 U.S.C. § 866(c) (2000) ("[The CCA] may affirm only such . . . sentence or such part or amount of the sentence, as it finds correct in law and fact and determines . . . should be approved.").

discussed in greater length in section I.C., *infra*, this backdrop informs that "appropriate relief" must be meaningful.

C. "Appropriate relief" under Article 66(d)(2), UCMJ, must be meaningful.

This is true for three reasons: (1) the plain language of the statute; (2) at least three other canons of statutory construction; and (3) the decisions of the CCAs.

1. The phrase "appropriate relief" requires "meaningful relief."

Relief cannot be appropriate unless it is meaningful, which is evident from the plain text of Article 66(d)(2), UCMJ. Merriam-Webster defines "appropriate" as "especially suitable or compatible." *Appropriate*, MERRIAM-WEBSTER DICTIONARY (online ed.). Appropriate has also been defined as "suitable or right *for a particular situation*." *Appropriate*, CAMBRIDGE DICTIONARY (online ed.) (emphasis added). Similarly, meaningful has been defined as "having a . . . purpose," *Meaningful*, MERRIAM-WEBSTER DICTIONARY (online ed.), or, more exactly, as "suitable . . . *for a particular purpose*." *Meaningful*, DICTIONARY.COM (online ed.) (emphasis added). Therefore, "appropriate relief" is that which is suitable to a *particular* situation. And, "meaningful relief" is that which is suitable for a *particular* purpose. The fact that these terms are nearly identical informs that "appropriate relief" must include "meaningful relief." It is unsurprising, then, that this Court concluded that for relief to be appropriate, it must also be meaningful. *Pflueger*, 65 M.J. at 130-31.

2. Several canons of statutory construction inform that "appropriate relief" requires "meaningful relief."

At least three canons of statutory construction support this interpretation: (1) the prior construction canon; (2) the presumption against implied repeal; and (3) the canon of imputed common law meaning.

a. The Prior Construction Canon

Before the enactment of Article 66(d)(2), UCMJ, the term "appropriate relief" had a settled meaning in the law. Specifically, "appropriate relief" had to be "meaningful." *Pflueger*, 65 M.J. at 130-31. Under the prior construction canon, "appropriate relief" in Article 66(d)(2), UCMJ, must mean "meaningful relief" because "appropriate relief" had that settled meaning at the time of enactment.

The prior construction canon "teaches that if courts have settled the meaning of an existing provision, the enactment of a new provision that mirrors [it] . . . has that same meaning." *Lightfoot v. Cendant Mort. Corp.*, 580 U.S. 82, 95-96 (2017) (citing *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998)). So "when a 'word or phrase has been authoritatively interpreted [and] a later version of that act perpetuat[es] the wording," the same meaning is given to the word or phrase. *Minerva Surgical, Inc. v. Hologic, Inc.*, 594 U.S. 559, 580 n.2 (2021) (Alito, J., dissenting) (quoting A. Scalia & B. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 322 (2012)) (alterations in original). While this canon ordinarily applies where Congress uses language from its own statutes, *United States v. Yun Zheng*, 87 F.4th 336, 344

(6th Cir. 2023), its logic extends where Congress adopts language used by appellate courts.

The jurisprudence on the Religious Freedom Reformation Act (RFRA) and Religious Land Use and Institutionalized Persons Act (RLUIPA) provides a helpful example. The RFRA and RLUIPA sought to "counter the effect of [the Supreme Court's holding in *Employment Division v. Smith*, 494 U.S. 872 (1990),] and restore the pre-*Smith* [test]" to religion claims. *Tanzin v. Tanvir*, 592 U.S. 43, 45 (2020); *see Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695 (2014) (reasoning that RLUIPA "imposes the same general test as RFRA"). Because Congress adopted language in RFRA and RLUIPA that mirrored the Supreme Court's language in pre-*Smith* cases, the Court has interpreted those statutes in line with pre-*Smith* jurisprudence.[4] *See Holt v. Hobbs*, 574 U.S. 352, 368 (2015) (rejecting arguments by a party that were previously disposed of in pre-*Smith* jurisprudence). The Supreme Court has done so even though "nothing in the text of RFRA as originally enacted suggested that [it] . . . was meant to be tied to this Court's pre-*Smith* interpretation." *Hobby Lobby*, 573 U.S. at 714.

Similarly, this Court interpreted Article 66(c), UCMJ, to require appropriate relief for excessive post-trial delay and that such relief must be meaningful. *Pflueger*,

[4] The pre-*Smith* test comes primarily from *Sherbert v. Werner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). *Holt v. Hobbs*, 574 U.S. 352, 357 (2015).

65 M.J. at 130-31. Nearly a decade after this Court's decision in *Pflueger*, Congress incorporated *Tardif*'s "appropriate relief" language in Article 66(d)(2), UCMJ. *Compare Tardif*, 57 M.J. at 220 ("[A] [CCA] has authority . . . to grant appropriate relief for unreasonable and unexplained post-trial delays"), *with* 10 U.S.C. 866(d)(2) ("[T]he [CCAs] may provide appropriate relief if the accused demonstrates . . . delay in the processing of the court-martial after the judgment."). Because Congress adopted *Tardif*'s language of "appropriate relief," the precedential meaning of that phrase—to include "meaningful relief"—was also adopted by Congress.

This Court should interpret the Article 66(d)(2), UCMJ, language for "appropriate relief" as incorporating this Court's precedent in *Pflueger*. This is both consistent with the logic of the prior construction canon and the Supreme Court's jurisprudence.

b. The Presumption against Implied Repeal

Congress did not expressly repeal or otherwise overturn this Court's precedent in *Pflueger* when enacting Article 66(d)(2), UCMJ. As a result, the presumption against implied repeal informs that "appropriate relief" must be meaningful.

The canon against implied repeal creates a "presumption that a later enacted statute does not impliedly repeal a former one." *Minerva Surgical*, 594 U.S. at 589 n.4 (Barrett, J., dissenting). While ordinarily applied in the context of conflicting

statutes,[5] *see, e.g.*, *Eckloff v. District of Columbia*, 135 U.S. 250, 241-42 (1890), the logic extends to cases where interpretation of a statute implicates the repeal of settled jurisprudence. *Cf. id*. at 243 (explaining that the presumption against implied repeal is a logical presumption). In this case, the canon against implied repeal suggests that Congress would not have—by operation of Article 66(d)(2), UCMJ—impliedly repealed this Court's precedent concerning "meaningful relief" without explicitly stating so. Therefore, this canon informs that "appropriate relief" requires "meaningful relief."

c. The Canon of Imputed Common Law Meaning

When Congress passed Article 66(d)(2), UCMJ, the phrase "appropriate relief" was understood to mean "meaningful relief." *Pflueger*, 65 M.J. at 130-31. Because of this, the canon of imputed common law meaning shows that "appropriate relief" under Article 66(d)(2), UCMJ, must be meaningful.

The canon of imputed common law meaning states that "where Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of the[] terms." *Neder v. United States*, 527 U.S. 1, 21

[5] Notably, this canon does not apply "to a statute that creates no rights but merely provides a civil cause of action," *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120 n.2 (2005). No such limitation exists, however, where the question involves a right created by law. *Id*. In this case, the right to post-trial processing free from unreasonable delay is a statutory right, not a civil cause of action.

(1999) (quoting *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992)). This means that "[w]here words are employed in a statute which had at the time a well-known meaning . . . in the law of this country, they are presumed to have been used in that sense." *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 59 (1911).

Here, Congress adopted the phrase "appropriate relief" in Article 66(d)(2), UCMJ. 10 U.S.C. § 866(d)(2). They did so after this Court concluded that "appropriate relief" must be meaningful. *Pflueger*, 65 M.J. at 130-31; *see United States v. Borosak*, 67 M.J. 23 (C.A.A.F. 2008). In fact, Congress adopted this language nearly a decade after this Court's decision in *Pflueger*. *Compare Pflueger*, 65 M.J. 127, *with Allison*, 2021 CCA LEXIS 605, at *13 n.39. When Congress uses words that have a settled meaning in caselaw, "Congress means to incorporate" that established meaning. *See Neder*, 527 at 21; *Standard Oil*, 221 U.S. at 59; *see also Kisor v. McDonough*, 995 F.3d 1347, 1373 (Fed. Cir. 2021) (*per curiam*) (O'Malley, J., dissenting) (explaining that where courts have settled the meaning of a word or phrase, that meaning is imputed to the statutory language). Therefore, when Congress adopted the words "appropriate relief," it also adopted this Court's jurisprudence in *Pflueger*.

3. <u>As demonstrated by the CCAs, Article 66(d)(2), UCMJ, is synonymous with this Court's requirement for meaningful relief.</u>

Congress adopted this Court's precedent in *Tardif* and *Plueger* by statute. *Compare Tardif*, 57 M.J. at 220 ("[A] [CCA] has authority . . . to grant appropriate

relief for unreasonable and unexplained post-trial delays.") *and Pflueger*, 65 M.J. at 130-31, *with* 10 U.S.C. 866(d)(2) ("[T]he [CCAs] may provide appropriate relief if the accused demonstrates . . . delay in the processing of the court-martial after the judgement."). As the Supreme Court's jurisprudence in the RFRA cases suggests, the precedent of *Tardif* and its progeny apply to the interpretation of "appropriate relief." The CCAs seem to agree.

In assessing Article 66(d)(2), UCMJ, the Army Court of Criminal Appeals (Army Court) equated "meaningful" and "appropriate" relief. *United States v. Morris*, ARMY 2021064, 2023 CCA LEXIS 197, at *1 n.4 (A. Ct. Crim. App. May 8, 2023); *but see United States v. Winfield*, 83 M.J. 662, 666 (A. Ct. Crim. App. 2023) (relying only on appropriate relief). In *United States v. Ovando*, the Navy-Marine Corps Court of Criminal Appeals (Navy-Marine Court) assessed an unreasonable post-trial delay issue under Article 66, UCMJ, and *Tardif*. No. 202200236, 2024 CCA LEXIS 65, at *18-19 (N-M. Ct. Crim. App. Feb. 9, 2024). And, just this past term, the Coast Guard Court of Criminal Appeals (Coast Guard Court) assessed post-trial delay "under Article 66(d)(2), UCMJ, *and* [*Tardif*]." *United States v. Mieres*, 84 M.J. 682, 688 (C.G. Ct. Crim. App. 2024) (emphasis added). While the Air Force Court did not make clear how it was granting relief in this case, it explicitly invoked both Article 66(d)(2) and *Tardif*'s progeny in assessing whether relief was warranted. JA at 8-10.

D. Conclusion

The CCAs seem to agree that Article 66(d)(2), UCMJ, relief and *Tardif* relief are one in the same. This makes sense considering that Article 66(d)(2), UCMJ, was adopted after this Court's decisions in *Tardif* and *Pflueger*. This, coupled with the plain text and canons of statutory construction, demonstrates that "appropriate relief" requires "meaningful relief." This Court should hold that Article 66(d)(2), UCMJ, requires meaningful relief for excessive post-trial delay.

II. The Air Force Court erred by failing to award "meaningful relief" despite finding relief warranted pursuant to Article 66(d)(2), UCMJ, and *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002), for unreasonable post-trial delay.

A. Standard of Review

Whether meaningful *Tardif* relief was granted by a CCA for post-trial delay is a question of law reviewed de novo. *Pflueger*, 65 M.J. at 128.

B. A1C Valentin-Andino is entitled to relief, but the relief provided was not meaningful.

As discussed in Part I *supra*, Article 66(d)(2), UCMJ, requires meaningful relief where there is excessive post-trial delay. However, should this Court disagree, meaningful relief is still required in this case because the 2019 version of Article 66(d)(1), UCMJ, applies.

Article 66(d)(1), UCMJ, states that CCAs "may affirm only the sentence, or such part or amount of the sentence, as the [CCA] finds correct in law and fact and

determines . . . should be approved." 10 U.S.C. § 866(d)(1) (2019). This Court has held that CCAs must use their Article 66, UCMJ, power "to determine what . . . sentence 'should be approved,' based on all the facts and circumstances . . . including unexplained and unreasonable post-trial delay." *Tardif*, 57 M.J. at 224. *Tardif* relief must be "meaningful." *Pflueger*, 65 M.J. at 130. To determine whether meaningful relief has been awarded, this Court "compar[es] Appellant's case to the situation he would have faced had the lower court found no *Tardif* error." *Id*. When the relief provided by the CCA has no practical effect on an appellant, the relief is meaningless. *Borosak*, 67 M.J. 23.

The Air Force Court found *Tardif* relief was warranted but failed to award meaningful relief. JA at 10. Instead, the Air Force Court merely adjusted A1C Valentin-Andino's reduction in grade from E-1 to E-2. JA at 12. The practical impact of this adjustment is meaningless. In addition to the reduction in grade, A1C Valentin-Andino was sentenced to 90 days of confinement and a dishonorable discharge—neither of which were adjusted by the Air Force Court. This means that A1C Valentin-Andino received no benefit from the adjusted rank reduction, to include pay or allowances, due to total forfeitures of pay that operated as a matter of law. 10 U.S.C. § 858b(a). This is similar to *United States v. Borosak*, where the CCA disapproved two months of forfeitures—but did not adjust the sentence to confinement—meaning that the appellant received no practical benefit from the

disapproval of adjudged forfeitures. 67 M.J. at 23. When comparing A1C Valentin-Andino's position before and after *Tardif* relief was granted by the Air Force Court, he is in the same position. This is a far cry from the meaningful relief required by this Court. *Pflueger*, 65 M.J. at 130.

Even though A1C Valentin-Andino completed his confinement sentence, the Air Force Court could have adjudged confinement credit. Such relief would have provided A1C Valentin-Andino with a practical benefit: pay and allowances that were automatically forfeited. Such a remedy is consistent with the Army Court's decision in *United States v. Lopezmorales*. In that case, the Army Court found that a 176-day delay in creating a trial transcript warranted meaningful *Tardif* relief in the form of confinement credit. ARMY 20130502, 2014 CCA LEXIS 801, at *4-5 (A. Ct. Crim. App. Oct. 21, 2014). The Army Court provided such relief knowing that the appellant had already served the adjudged confinement. *Compare id.* at *1 (explaining that the appellant was sentenced to eight months—or 240 days—of confinement), *with id.* at *4 (showing that the pre-docketing delay amounted to 253 days). In this case, the Air Force Court declined to provide any confinement credit, even though A1C Valentin-Andino was in a similar position to Staff Sergeant Christian Lopezmorales.[6]

[6] Similarly, the Coast Guard Court awarded confinement credit even though that appellant had completed service of his confinement time. *United States v. Tardif*, 58 M.J. 714, 716 (C.G. Ct. Crim. App. 2003), *aff'd*, 59 M.J. 394 (C.A.A.F. 2004).

Not only did the Air Force Court fail to award meaningful relief, it also failed to analyze if the relief provided was "meaningful."[7] In *United States v. Feeney-Clark*, the Army Court explained why the *Tardif* relief contemplated by the appellant would be meaningless. ARMY 20180694, 2020 CCA LEXIS 256, at *8 n.5 (A. Ct Crim. App. Jul. 29, 2023). While the Army Court ultimately found that any relief provided would be meaningless, they took the required step not taken by the Air Force Court: assessing whether any relief would be "meaningful" under *Pflueger* and its progeny. *Id*. Where, as here, a CCA fails to assess whether the relief contemplated is "meaningful," remand is appropriate. *United States v. Roche*, 69 M.J. 94 (C.A.A.F. 2010); *United States v. Roche*, NMCCA 200800423, 2010 CCA LEXIS 100, at *3 n.1 (N-M. Ct. Crim. App. Aug. 24, 2010) (deciding, in accordance with this Court's remand order, that the relief provided was meaningful).

[7] The Air Force Court references "meaningful relief" only once in their opinion. JA at 9 (quoting *United States v. Gay*, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015)). This reference appears only in the court's recitation of law, not in their analysis section. *Compare* JA at 9, *with* JA at 9-12.

C. Conclusion

The Air Force failed to (1) determine whether the relief provided was "meaningful," and (2) provide meaningful relief. Therefore, this Court should remand this case to the Air Force Court with instructions to provide A1C Valentin-Andino with meaningful relief.

Respectfully submitted,

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Certificate of Compliance with Rules 24(b) and 37

This Brief on Behalf of Appellant complies with the type-volume limitation of Rule 24(b) because this brief contains 4,861 words. This brief also complies with the typeface and type style requirements of Rule 37.

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Certificate of Filing and Service

I certify that an electronic copy of the forgoing was electronically sent to the Court and served on the Government Appellate Division on October 30, 2024.

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