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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REPLY BRIEF

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ARGUMENT

I. *Pflueger* was not poorly reasoned or wrongly decided, and this Court's stare decisis factors inform against overturning it.

This Court's decision in *United States v. Pflueger*, 65 M.J. 127 (C.A.A.F. 2007), was not wrongly decided. This Court should decline to overturn *Pflueger* because each factor from *United States v. Quick*, 74 M.J. 332 (C.A.A.F. 2015), weighs against doing so.

A. *Pflueger* provided guidance on *Tardif*'s "appropriate relief" standard under then-Article 66(c), UCMJ.

In *Tardif*, this Court interpreted then-Article 66(c), UCMJ. 10 U.S.C. § 866(c) (2000). *United States v. Tardif*, 57 M.J. 219, 220 (C.A.A.F 2002). This Court determined that Courts of Criminal Appeal (CCAs) have authority to grant "appropriate relief" for unreasonable and unexplained post-trial delays. *Id*. This Court declined to provide the CCAs with a rigid, "all-or-nothing" guideline for providing *Tardif* relief. *Id.* at 225. Instead, this Court gave the CCAs latitude in determining "appropriate relief" in the light of excessive post-trial delay. *Id*. (referencing *United States v. Timmons*, 46 C.M.R. 226 (C.M.A. 1973)).

Just five years later, a unanimous Court decided *Pflueger*. 65 M.J. 127. *Pflueger* provided additional guidance on the scope of appropriate *Tardif* relief under then-Article 66(c), UCMJ, 10 U.S.C. § 866(c). *Id*. at 128. This Court held that

when a CCA determines *Tardif* relief is warranted, such relief must be "meaningful." *Id.* at 131.

B. The *Quick* factors inform against overturning *Pflueger*.

When deciding whether to overturn precedent, this Court uses four factors. *Quick*, 74 M.J. at 336. Those factors are: (1) whether the prior decision is unworkable or poorly reasoned; (2) whether there are any intervening events which impact the decision; (3) whether the reasonable expectations of servicemembers would be frustrated; and (4) any risk of undermining public confidence in the law. *Id.*; *see United States v. Wells*, __ M.J. __, 2024 CAAF LEXIS 552, at *9-10 (C.A.A.F. 2024) (referencing the these factors).

1. *Pflueger* is not unworkable or poorly reasoned.

First, *Pflueger* was not poorly reasoned. *Pflueger* proceeds *Tardif* in interpreting the type of relief available to appellants under then-Article 66(c), UCMJ. Both *Tardif* and *Pflueger* were statutory interpretation cases[1] where this Court analyzed the power afforded to CCAs in conducting sentence appropriateness

[1] *Tardif*, 57 M.J. at 223; *cf*. *Pflueger*, 65 M.J. at 128 (explaining that post-trial delay relief is inherent in Article 66, UCMJ, 10 U.S.C. § 866 (2000)). Because these cases involved statutory interpretation, this Court reviewed them de novo. While the Government agrees questions of statutory interpretation are reviewed de novo, Ans. at 7, it argues *Pflueger* was poorly reasoned for using de novo review. Ans. at 12. This makes little sense because questions of statutory interpretation are always reviewed de novo. *See, e.g.*, *United States v. Flores*, 84 M.J. 277, 280 (C.A.A.F. 2024).

review. Read together, these cases provide guidance on the type and manner of relief CCAs may provide under then-Article 66(c), UCMJ, for unreasonable and unexplained post-trial delay.

The Government expresses confusion over the origin of the word "meaningful" in *Pflueger*. Ans. at 9 ("It is unclear where the requirement for 'meaningful' relief stemmed from."). But the origin of "meaningful" is evident from context: it comes from then-Article 66(c), UCMJ. As the Government recognizes, *Pflueger* relied heavily on *Tardif*. Ans. at 9; *see Pflueger*, 65 M.J. at 130-31. *Tardif* itself extensively reviewed the congressional record in determining the type and manner of relief a CCA could provide for unreasonable and unexplained post-trial delay under then-Article 66(c), UCMJ. *Tardif*, 57 M.J. at 223-24. *Pflueger* was decided unanimously, just five years after *Tardif*. And *Pflueger*'s heavy reliance on *Tardif* demonstrates that "meaningful" comes from this Court's understanding of then-Article 66(c)'s statutory requirements.

Moreover, even if not evident from the statute, the definitions for "appropriate" and "meaningful" are inextricably linked. For example, the word "appropriate" is defined as "suitable or fitting *for a particular purpose*." *Appropriate*, DICTIONARY.COM (online ed.); *cf. Appropriate*, CAMBRIDGE

DICTIONARY (online ed.) ("Suitable or right for a particular situation.").[2] The word "meaningful" is defined as "having a purpose." *Meaningful*, MERRIAM-WEBSTER DICTIONARY (online ed.); *see Meaningful*, DICTIONARY.COM (online ed.) ("Full of meaning, significance, purpose."). Taken together, these two terms indicate a fulfillment of a particular purpose, which the Government recognizes. Ans. at 19. Given the plain meaning of these two words, it is unsurprising that this Court read them together under its *Tardif* precedent.

To bolster its argument that *Pflueger* was poorly reasoned, the Government looks to two inapt cases, *United States v. Toohey*, 63 M.J. 353 (C.A.A.F 2006) and *United States v. Rodriguez-Rivera*, 63 M.J. 372 (C.A.A.F. 2006). Ans. at 9-13. These cases were not *Tardif* cases; rather, they were constitutional post-trial delay cases. *Rodriguez-Rivera*, 63 M.J. at 375; *Toohey*, 63 M.J. at 356. The standards for constitutional post-trial delay and *Tardif* post-trial delay are distinct. *Compare Tardif*, 63 M.J. at 223-25 (discussing the mandate in then-Article 66(c), UCMJ, for CCAs to analyze non-constitutional post-trial delay and afford "appropriate relief") *and Pflueger*, 65 M.J. at 130-31 (discussing the requirement for "meaningful relief" under *Tardif*), *with United States v. Moreno*, 63 M.J. 129, 141, 143 (C.A.A.F. 2006) (discussing unconstitutional post-trial delays and the type of relief afforded for such

[2] In his opening brief [hereinafter "Br."], A1C Valentin-Andino incorrectly cited to *Meaningful*, DICTIONARY.COM (online ed.), Br. at 9, when he intended to cite to *Appropriate*, DICTIONARY.COM (online ed.).

errors); *see United States v. Anderson*, 82 M.J. 82, 86 (C.A.A.F. 2022) (discussing constitutional post-trial delays).

Second, *Pflueger*'s guidance is not unworkable. The CCAs have not expressed concern with applying the standard set-forth in *Pflueger*. Instead, the CCAs have used it to analyze "appropriate" and "meaningful" relief in several cases. *See, e.g.*, *United States v. Gay*, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015), *aff'd*, 75 M.J. 264 (C.A.A.F. 2016), (creating a six-factor test for *Tardif* relief, one of which includes the question, "can [the Air Force Court] provide meaningful relief in this particular situation"); *United States v. Lopezmorales*, ARMY 20130502, 2014 CCA LEXIS 801, at *4-5 (A. Ct. Crim. App. Oct. 21, 2014) (analyzing "meaningful relief" for post-trial delay).

A1C Valentin-Andino recognizes that not all "meaningful relief" would be "appropriate." But the Government is wrong to suggest *Pflueger* requires CCAs to award "meaningful" relief even if it were inappropriate. Ans. at 15; *see United States v. Feeney-Clark*, ARMY 20180694, 2020 CCA LEXIS 256, at *8 n.5 (A. Ct. Crim. App. Jul. 29, 2023) (affording no relief even though the post-trial delay was unreasonable and unexplained). Rather, what is required by *Pflueger* is that the CCAs assess whether meaningful relief *could* be granted. *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).

Pflueger was not poorly reasoned or wrongly decided. Therefore, this factor weighs against overturning it.

2. The intervening event does not support overturning *Pflueger*.

The Military Justice Act of 2016 "amended the UCMJ such that Article 66(d)(2), UCMJ, specifically invests the [CCAs] with authority to grant 'appropriate relief' for . . . excessive delay." *United States v. Allison*, No. 201800251, 2021 CCA LEXIS 605, at *13 n.39 (N-M. Ct. Crim. App. Nov. 16, 2021); *see* 10 U.S.C. § 866(d)(2) (2019). While the Government is correct that Congress did not specifically note "appropriate" includes "meaningful," Ans. at 16, several canons of statutory construction inform that it should be included. Br. at 10-14. As discussed in A1C Valentin-Andino's opening brief, Br. at 10-14, and in part II, *infra*, those canons demonstrate that the new Article 66(d)(2), UCMJ, incorporates, rather than changes, *Pflueger*'s call for "meaningful relief."

3. The reasonable expectations of servicemembers may be frustrated by overturning *Pflueger*.

In *Quick*, this Court reasoned that "[w]hile it is difficult to quantify the expectations of servicemembers . . . [the subject case] has become an established component of the military justice system." 74 M.J. at 337. Similarly, *Pflueger* has been a part of this Court's *Tardif* jurisprudence for nearly two decades. It is the backdrop of many CCA decisions, including the Air Force Court's six-factor *Tardif* analysis. *Gay*, 74 M.J. at 744. Similarly, Congress chose to adopt this Court's *Tardif*

precedent, to include *Pflueger*'s requirement for meaningful relief, in the new Article 66(d)(2), UCMJ. *Infra* Part II; Br. at 10-14.

The Government contends that this factor weighs in favor of overturning *Pflueger* because "[i]t is unlikely that any servicemember will have behaved in a certain way." Ans. at 16-17. But this Court has never reasoned that individual servicemember behavior underlies this factor. *See, e.g.*, *United States v. Blanks*, 77 M.J. 239, 242 (C.A.A.F. 2018); *Quick*, 74 M.J. at 337-38; *see also United States v. Grijalva*, 84 M.J. 433, 443 (C.A.A.F. 2024) (Hardy, J., concurring). Rather, because *Pflueger* has been a part of this Court's *Tardif* jurisprudence for nearly two decades, reasonable expectations would be frustrated should it be overturned. *Quick*, 74 M.J. at 337.

4. There is a substantial risk that the public's confidence in the law will be undermined.

Public confidence in the law would be undermined should this Court overturn *Pflueger*. Much like in *Quick*, *Pflueger* has been a rule in the military justice system for decades. *Quick*, 74 M.J. at 338. During that time "it has become accepted procedure" with a "predictable and consistent appellate remedy for both litigants and the lower courts to follow." *Id*.; *see Gay*, 74 M.J. at 744; *Lopezmorales*, ARMY 20130502, 2014 CCA LEXIS 801, at *4-5. Therefore, overturning *Pflueger* would undermine public confidence in the law.

II. Even if this Court were to overturn *Pflueger*, *Pflueger*'s impact on interpreting Article 66(d)(2), UCMJ, is unchanged.

Tardif and *Pflueger* applied to then-Article 66(c), UCMJ. But, the current Article 66(d)(2), UCMJ, adopts this Court's *Tardif* precedent, to include *Pflueger*. So, even if this Court overturned *Pflueger*, the new Article 66(d)(2), UCMJ, requires "appropriate relief" be meaningful. Several canons of statutory construction support this conclusion.

First, the prior construction canon. This canon states that if a word or phrase has a settled meaning in the law, then it should be given that settled meaning. *Lightfoot v. Cendant Mort. Corp.*, 580 U.S. 82, 95-96 (2017); Scalia & Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) at 322. Here, this Court settled the meaning of "appropriate" under *Tardif*: it must be meaningful. *Pflueger* 65 M.J. at 130-31. When Congress adopted Article 66(d)(2), UCMJ, the prior construction canon informs that it did so with an understanding of that settled meaning.

The Government agrees that the prior construction canon is applicable, Ans. at 20, but argues "appropriate" *Tardif* relief did not require "meaningful" relief. Ans. at 20-21. This is inaccurate. *Pflueger* and its progeny clearly required that "appropriate" *Tardif* relief be "meaningful." *Pflueger*, 65 M.J. at 130-31; *see Roche*, 69 M.J. 94; *Roche*, NMCCA 200800423, 2010 CCA LEXIS 100, at *3 n.1. Moreover, the Government relies on *Toohey* and *Rodriguez-Rivera* to make its point.

Ans. at 20-21. But these cases do not inform this analysis because they are not *Tardif* cases; they are constitutional ones. "Context is important" for the prior construction canon, Scalia & Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) at 323, and this Court should not ignore the different contexts in which "appropriate relief" is used in *Tardif* and non-*Tardif* cases.

Second, the canon of imputed common law meaning. This canon states that "words undefined in a statute are to be interpreted and applied according to their common-law meaning." Scalia & Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) at 322. In other words, "[w]here words are employed in a statute which had at the time a well-known meaning . . . in the law . . . 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). Similar to the prior construction canon, Congress adopted "appropriate" relief in Article 66(d)(2), UCMJ, after this Court settled its meaning. While the Government notes that "meaningful" and "appropriate" do not appear in Justice Scalia's book, Ans. at 23, this is not dispositive. After all, there are many phrases and words that have a "settled meaning in the law" but do not appear in the one sentence of examples provided in Justice Scalia's summary. *Compare, e.g.*, *Standard Oil*, 221 U.S. at 59 (imputing the common law meaning to "restraint of trade"), *United States v. Des Moines Navigation & R. Co.*, 142 U.S. 510, 530 (1892) (commenting that "bona fide purchaser" has a "well settled meaning in the law"),

with Scalia & Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) at 322 (giving a non-exhaustive list of terms with a settled meaning: "assault, child, defraud, estate, forge, fraud, next-of-kin, and record of conviction").

Third, the presumption against implied repeal. This canon creates a "presumption that a later enacted statute does not impliedly repeal a former one." *Minerva Surgical, Inc. v. Hologic, Inc.*, 594 U.S. 559, 589 n.4 (2021) (Barrett, J., dissenting). The logic of this canon informs that, in this case, Congress would not have impliedly repealed this Court's precedent in *Pflueger* without expressly stating so. *Cf. Eckloff v. District of Columbia*, 135 U.S. 240, 243 (1890). The Government argues that *Pflueger* does not require "appropriate relief" be meaningful and, therefore, this canon is not applicable. Again, this is inaccurate, as *Pflueger* clearly indicates "appropriate" *Tardif* relief must be meaningful. *Pflueger*, 65 M.J. at 130-31; *see Roche*, 69 M.J. 94; *Roche*, NMCCA 200800423, 2010 CCA LEXIS 100, at *3 n.1.

Therefore, at least three canons of statutory construction inform that Congress adopted this Court's *Tardif* precedent in Article 66(d)(2), UCMJ. Because "appropriate" *Tardif* relief must be meaningful, so too must relief under Article 66(d)(2), UCMJ.

III. Because Article 66(d)(2), UCMJ, requires meaningful relief, this Court should remand the case to the Air Force Court for further proceedings.

This Court should remand to the Air Force Court with instructions to consider whether any "appropriate" relief would be meaningful. The Government seems to agree. Ans. at 32.

This Court's *Tardif* precedent—which Congress adopted in Article 66(d)(2), UCMJ—is clear. When a CCA determines relief is appropriate, the provided relief must be meaningful. *Pflueger*, 65 M.J. at 130-31; *see Roche*, 69 M.J. 94; *Roche*, NMCCA 200800423, 2010 CCA LEXIS 100, at *3 n.1. Here, the Air Force Court did not assess whether the relief contemplated would be meaningful. This was error.

While the Government is correct that this Court does not ordinarily require the CCAs to explain its sentence appropriateness rationale, Ans. at 27 (citing *Flores*, 84 M.J. at 282), ordinary sentence appropriateness is distinct from *Tardif* relief. For *Tardif* relief, this Court has been clear that the CCAs must explain how the contemplated "appropriate" relief is meaningful. *See Roche*, 69 M.J. 94; *Roche*, NMCCA 200800423, 2010 CCA LEXIS 100, at *3 n.1. A1C Valentin-Andino concedes that, in some cases, meaningful relief may not be appropriate. But, in such a case, the CCA still has an obligation to explain why it is choosing not to award meaningful relief. *Feeney-Clark*, ARMY 20180694, 2020 CCA LEXIS 256, at *8 n.5; *cf. Roche*, 69 M.J. 94; *Roche*, NMCCA 200800423, 2010 CCA LEXIS 100, at *3 n.1.

Because the Air Force Court did not provide meaningful relief, and it did not explain its rationale in doing so, this Court should remand for further proceedings.

Respectfully submitted,

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Certificate of Compliance with Rules 24(b) and 37

This Reply Brief complies with the type-volume limitation of Rule 24(b) because this brief contains 2,667 words. This brief also complies with the typeface and type style requirements of Rule 37.

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