April 1, 2026

IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,
Appellee,

v.

Gavin D. Turtu
Senior Airman (E-4), U.S. Air Force,
Appellant.

Crim. App. Dkt. No. ACM 40649 (f rev)

USCA Dkt. No. 26-0144/AF

SUPPLEMENT TO PETITION FOR GRANT OF REVIEW

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, *Appellee*,	)	**SUPPLEMENT TO PETITION FOR GRANT OF REVIEW**
v.	)	
	)	Crim. App. Dkt. No. ACM 40649 (f rev)
Gavin D. Turtu, Senior Airman (E-4) United States Air Force, *Appellant*.	)	USCA Dkt. No. 26-0144/AF

Issue Presented

Did the Air Force Court of Criminal Appeals abuse its discretion by holding that delay resulting from a remand to correct a defective record of trial was not "unreasonable delay"?

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (AFCCA) had jurisdiction over this case pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3). This Court has jurisdiction under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

Statement of the Case

Appellant, Senior Airman (SrA) Gavin D. Turtu, U.S. Air Force, was tried by a general court-martial convened by the Commander, Eighteenth Air Force (AMC), at Little Rock Air Force Base (AFB), Arkansas, on April 1 to 2, 2024. The general court-martial consisted of a military judge alone. Consistent with Appellant's pleas,

the military judge found him guilty of four specifications of violating Article 128b, UCMJ, 10 U.S.C. § 928b.[1] Trial Tr. 15, 104–05. The government dismissed with prejudice an additional specification alleging a violation of Article 128b, UCMJ. Trial Tr. 15, 292. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, a dishonorable discharge, and confinement for a total of twenty-four months. Trial Tr. 293.[2]

The convening authority took no action on the findings but suspended the adjudged reduction in rank "for six months from 10 April 2024, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action." Convening Authority Decision on Action – *United States v. SrA Gavin D. Turtu* (Apr. 23, 2024). The convening authority also deferred automatic forfeitures until the date on which the military judge signed the entry of judgment and waived automatic forfeitures "for a period of six (6) months, or release from confinement, or expiration of term of service, whichever is sooner,

[1] The version of Article 128b that applied at the time of the offense and the time of trial was that enacted by the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 as amended by the NDAA for FY 2020. John S. McCain NDAA for FY 2019, Pub. L. No. 115-232, § 532, 132 Stat. 1636, 1759 (2018); NDAA for FY 2020, Pub. L. No. 116-92, § 1731(a)(20), 133 Stat. 1198, 1813 (2019).

[2] The military judge sentenced Appellant to confinement for twenty-four months for each of the four specifications and ordered all sentences to confinement to run concurrently. Trial Tr. 293. The military judge also awarded Appellant six days of confinement credit. *Id.*

with the waiver commencing on the date the military judge signs the entry of judgment." *Id.* The convening authority directed that all pay and allowances be provided to Appellant's spouse for her benefit and that of Appellant's three children. *Id.*

The Government initially provided the Air Force Court of Criminal Appeals (AFCCA) with what purported to be the record of trial on July 29, 2024. On June 30, 2025, AFCCA found that "[t]he original certified record of trial is not complete." *United States v. Turtu*, No. ACM 40649, 2025 CCA LEXIS 300, at *4 (A.F. Ct. Crim. App. June 30, 2025) (order). AFCCA accordingly remanded "the record for correction in accordance with the procedures prescribed by R.C.M. 1112." *Id.* AFCCA redocketed the case on August 15, 2025. *United States v. Turtu*, No. ACM 40649 (f rev) (A.F. Ct. Crim. App. Aug. 15, 2025) (notice of docketing).

AFCCA issued its opinion affirming the findings and sentence on January 14, 2026. Appendix. A copy of the opinion was mailed to Appellant on January 15, 2026. Appellant filed a timely petition for grant of review on March 9, 2026, accompanied by a motion to file the supplement subsequently. The Court granted the motion and authorized Appellant to file the supplement by April 1, 2026.

Statement of Facts

Based on his guilty pleas, Appellant was convicted of four domestic violence specifications involving his twin infant daughters. Charge Sheet; Trial Tr. 15, 104–05; Pros. Ex. 1.

Prosecution Exhibit 1 is a stipulation of fact. Pros. Ex. 1. The special trial counsel explained that Attachment 4 to Prosecution Exhibit 1 is a recording of a pretextual telephone call between MT and Appellant dated January 6, 2023, lasting 1 hour, 43 minutes, and 32 seconds. Trial Tr. 22. The trial counsel relied on portions of that recording during sentencing argument. *Id.* at 273; App. Ex. XIX, slides 9–12, 14.

When this case was originally docketed with AFCCA, more than half of Attachment 4 to Prosecution Exhibit 1 could not be played. *See Turtu*, 2025 CCA LEXIS 300, at *1. Nor could appellate defense counsel play three police body camera recordings that constituted Attachment 9 to Prosecution Exhibit 1 in the original record of trial. *Id.*

AFCCA concluded that "[t]he original record of trial is not complete." *Id.* at *4. The court explained that the "missing material was attached to the stipulation of fact, which the military judge considered before accepting Appellant's guilty plea and adjudging the sentence." *Id.* Thus, "[w]hether the findings of guilty were correct in law, and whether the sentence was correct in law or inappropriately severe,

depends in part on the evidence that was provided to the military judge, including the stipulation of fact and its attachments." *Id.* AFCCA therefore found "it appropriate to remand the record for correction in accordance with the procedures prescribed by R.C.M. 1112." *Id.* Forty-six days passed from when AFCCA issued that remand order until the record's redocketing with that court. *Compare id.*, *with United States v. Turtu*, No. ACM 40649 (f rev) (A.F. Ct. Crim. App. Aug. 15, 2025) (notice of docketing).

Appellant raised two assignments of error before the lower court. First, he argued that the portion of his sentence providing for a dishonorable discharge instead of a bad-conduct discharge is inappropriately severe. Appellant's Br. at 6–11. Second, he argued that unreasonable post-trial delay warranted sentencing relief pursuant to Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2). *Id.* at 11–14. The Air Force Court rejected both assignments of error. Appendix at 4–7, 7–10.

REASONS TO GRANT REVIEW

This Court should grant review to correct AFCCA's mistaken view that 46 days of post-trial delay resulting from a remand to correct a defective record of trial did not constitute "unreasonable delay."

A. Standards of Review

The standard for granting review of an issue that an accused raises before this Court is good cause shown. UCMJ art. 67(a)(3), 10 U.S.C. § 867(a)(3).

This Court reviews a Court of Criminal Appeals' application of Article 66(d) for an abuse of discretion. *United States v. Csiti*, 85 M.J. 414, 420 (C.A.A.F. 2025).[3] "A court abuses its discretion when its findings of fact are clearly erroneous, its decision is influenced by an erroneous view of the law, or the court's decision is unreasonable in light of the law and facts." *United States v. Navarette*, 81 M.J. 400, 405 (C.A.A.F. 2021).

B. Analysis

The Air Force suffers from an epidemic of defective records of trial. In 2024, AFCCA found that the "alarming frequency" of post-trial processing errors in the Air Force constituted "a systemic problem indicating institutional neglect." *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17

[3] This Court has directed briefing on "the proper standard of review" this Court applies "when reviewing the decision of a Court of Criminal Appeals in granting or denying relief for excessive post-trial delay using its power under Article 66(d)(2), UCMJ." *United States v. Valdez*, __ M.J. __, No. 26-0122/AR, 2026 CAAF LEXIS 286 (C.A.A.F. Mar. 25, 2026) (mem.).

(A.F. Ct. Crim. App. June 7, 2024), *aff'd*, 85 M.J. 361 (C.A.A.F. 2025). Those alarmingly frequent post-trial processing errors continue. This case was one of at least eleven that AFCCA was compelled to remand for correction of the record during FY 2025.[4] In a twelfth case, AFCCA set aside the findings and sentence because of deficiencies in the record of trial the Government submitted for docketing. *United States v. Titus*, No. ACM 40557, 2025 CCA LEXIS 146 (A.F. Ct. Crim. App. Apr. 7, 2025). In a thirteenth case, AFCCA allowed the Government to correct a defective record by filing missing audio recordings of a court-martial without a remand. *United States v. Dawson*, No. ACM 24041, 2025 CCA LEXIS 182, at *3 (A.F. Ct. Crim. App. Apr. 28, 2025). During the first six months of FY 2026, AFCCA has remanded another eight cases for correction of an incomplete

[4] *See also United States v. Mabida*, No. ACM 40682, 2025 CCA LEXIS 491 (A.F. Ct. Crim. App. Sep. 2, 2025) (order); *United States v. Pettigrew*, No. ACM 40790, 2025 CCA LEXIS 492 (A.F. Ct. Crim. App. Sep. 2, 2025) (order); *United States v. Bush*, No. ACM 40783, 2025 CCA LEXIS 394 (A.F. Ct. Crim. App. Aug. 21, 2025) (order); *United States v. Hooker*, No. ACM 40646, 2025 CCA LEXIS 486 (A.F. Ct. Crim. App. July 9, 2025); *United States v. Robinson*, No. ACM 24044, 2025 CCA LEXIS 259 (A.F. Ct. Crim. App. June 6, 2025) (order); *United States v. Anderson*, No. ACM 40654, 2025 CCA LEXIS 204 (A.F. Ct. Crim. App. May 8, 2025) (order); *United States v. Kindred*, No. ACM 40607, 2025 CCA LEXIS 147 (A.F. Ct. Crim. App. Apr. 7, 2025) (order); *United States v. Burkhardt-Bauder*, No. ACM 24011, 2025 CCA LEXIS 81 (A.F. Ct. Crim. App. Feb. 19, 2025) (order); *United States v. Martinez*, No. ACM 39903 (reh), 2024 CCA LEXIS 551 (A.F. Ct. Crim. App. Dec. 16, 2024) (order); *United States v. Covitz*, No. ACM 40139 (reh), 2022 [sic] CCA LEXIS 751 (A.F. Ct. Crim. Dec. 6, 2024) (order).

record.[5] It was compelled to remand one of those cases *twice* due to defects in the record of trial.[6] Thus, the Air Force is on pace to exceed FY 2025's already-alarming number of remands for defective records.

The Air Force also suffers from an epidemic of post-trial delay. In FY 2025, AFCCA decided at least 17 automatic appeal cases in which the record was not docketed within 150 days of sentencing.[7] For comparison purposes, during that

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[5] *United States v. Jackson*, No. ACM S32780, 2025 CCA LEXIS 499 (A.F. Ct. Crim. App. Oct. 24, 2025) (order); *United States v. Marcoux*, No. ACM 40708, 2025 CCA LEXIS 586 (A.F. Ct. Crim. App. Dec. 20, 2025) (order); *United States v. Bowers*, No. ACM 40838, 2026 CCA LEXIS 40 (A.F. Ct. Crim. App. Jan. 27, 2026) (order); *United States v. Smith*, No. ACM 40782, 2026 CCA LEXIS 38 (A.F. Ct. Crim. App. Jan. 27, 2026) (order); *United States v. Kristopik*, No. ACM 40674, 2026 CCA LEXIS 68 (A.F. Ct. Crim. App. Feb. 6, 2026) (order); *United States v. Rahman*, No. ACM 40921, 2026 CCA LEXIS 114 (A.F. Ct. Crim. App. Mar. 6, 2026) (order); *United States v. Her*, No. ACM 40747, 2026 CCA LEXIS 125 (A.F. Ct. Crim App. Mar. 17, 2026) (order); *United States v. Nixon*, No. ACM 40896, 2026 CCA LEXIS 143 (A.F. Ct. Crim. App. Mar. 24, 2026) (order).

[6] *Marcoux*, 2025 CCA LEXIS 586; *United States v. Marcoux*, No. ACM 40708 (f rev), 2026 CCA LEXIS 123 (A.F. Ct. Crim App. Mar. 17, 2026) (order).

[7] *United States v. Scott*, No. ACM 40411, 2024 CCA LEXIS 415 (A.F. Ct. Crim. App. Oct. 7, 2024) (297 days from sentencing to docketing), *petition denied*, 85 M.J. 441 (C.A.A.F. 2025); *United States v. Nakken*, No. ACM S32767, 2024 CCA LEXIS 420 (A.F. Ct. Crim. App. Oct. 10, 2024) (222 days from sentencing to docketing); *United States v. Cassaberry-Folks*, No. ACM 40444, 2024 CCA LEXIS 500 (A.F. Ct. Crim. App. Nov. 22, 2024) (412 days from sentencing to docketing); *United States v. Trovatore*, No. ACM 40505, 2024 CCA LEXIS 519 (A.F. Ct. Crim. App. Dec. 9, 2024) (154 days from sentencing to docketing); *United States v. Atencio*, No. ACM S32783, 2024 CCA LEXIS 543 (A.F. Ct. Crim. App. Dec. 20, 2024) (166 days from sentencing to docketing); *United States v. Cadavona*, No. ACM 40476, 2025 CCA LEXIS 17 (A.F. Ct. Crim. App. Jan. 16, 2025) (224 days from sentencing to docketing), *aff'd*, 86 M.J. 259 (C.A.A.F. 2025); *United States v. Floyd*, No. ACM S32784, 2025 CCA LEXIS 31 (A.F. Ct. Crim. App. Feb. 3, 2025) (155 days from sentencing to docketing), *petition denied*,

same fiscal year, the entire Department of the Navy docketed only three cases with the Navy-Marine Corps Court of Criminal Appeals more than 150 days after sentencing. Office of the Judge Advocate General, U.S. Navy, U.S. Navy Report on

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86 M.J. 117 (C.A.A.F. 2025), *cert. denied*, 146 S. Ct. 188 (2025); *United States v. Covitz*, No. ACM 40193 (reh), 2025 CCA LEXIS 105 (A.F. Ct. Crim. App. Mar. 19, 2025) (155 days from sentencing to docketing), *petition denied*, 86 M.J. 242 (C.A.A.F. 2025), *cert. denied*, 223 L. Ed. 2d 518 (2026); *United States v. Jenkins*, No. ACM S32765, 2025 CCA LEXIS 148 (A.F. Ct. Crim. App. Apr. 7, 2025) (154 days from sentencing to docketing), *petition denied*, __ M.J. __, No. 25-0180/AF, 2025 CAAF LEXIS 676 (C.A.A.F. Aug. 15, 2025); *United States v. Johnson*, No. ACM 40537, 2025 CCA LEXIS 193 (A.F. Ct. Crim. App. May 2, 2025) (196 days from sentencing to docketing), *petition granted*, __ M.J. __, No. 25-0202/AF, 2025 CAAF LEXIS 716 (C.A.A.F. Aug. 26, 2025); *United States v. Hagen*, No. ACM 40561, 2025 CCA LEXIS 234 (A.F. Ct. Crim. App. May 28, 2025) (183 days from sentencing to docketing), *petition denied*, __ M.J. __, No. 25-0224/AF, 2025 CAAF LEXIS 841 (C.A.A.F. Oct. 6, 2025), *cert. denied sub nom.*, *Baumgartner v. United States*, 223 L. Ed. 2d 516 (2026); *United States v. Ryder*, No. ACM 40605, 2025 CCA LEXIS 283 (A.F. Ct. Crim. App. June 25, 2025) (369 days from sentencing to docketing); *United States v. Blair*, No. ACM S32778, 2025 CCA LEXIS 341 (A.F. Ct. Crim. App. July 28, 2025) (175 days from sentencing to docketing), *petition denied*, __ M.J. __, No. 25-0271/AF, 2025 CAAF LEXIS 899 (C.A.A.F. Oct. 27, 2025); *United States v. Tompkins*, No. ACM 40619, 2025 CCA LEXIS 359 (A.F. Ct. Crim. App. Aug. 1, 2025) (per curiam) (155 days from sentencing to docketing), *petition denied*, __ M.J. __, No. 25-0278/AF, 2025 CAAF LEXIS 878 (C.A.A.F. Oct. 21, 2025); *United States v. Slayton*, No. ACM 40583, 2025 CCA LEXIS 427 (A.F. Ct. Crim. App. Sep. 8, 2025) (203 days from sentencing to docketing), *recon. and recon. en banc denied* (A.F. Ct. Crim. App. Oct. 30, 2025), *certificate for review filed*, __ M.J. __, No. 26-0077/AF, 2025 CAAF LEXIS 1056 (C.A.A.F. Dec. 29, 2025); *United States v. Casillas*, No. ACM 40551, 2025 CCA LEXIS 445 (A.F. Ct. Crim. App. Sep. 18, 2025) (171 days from sentencing to docketing), *certificate for review filed*, __ M.J. __, No. 26-0096/AF, 2026 CAAF LEXIS 42 (C.A.A.F. Jan. 12, 2026); *United States v. Roberts*, No. ACM 40608, 2025 CCA LEXIS 476 (A.F. Ct. Crim. App. Sep. 30, 2025) (205 days from sentencing to docketing), *petition denied*, __ M.J. __, No. 26-0044/AF, 2026 CAAF LEXIS 78 (C.A.A.F. Jan. 23, 2026).

Military Justice for Fiscal Year 2025, at 2 (Dec. 31, 2025), *available at* https://www.nimj.org/uploads/1/3/5/5/135587129/fy25_article_146a_u.s.[8]

The phenomena of post-trial processing errors and unreasonable appellate delay are related. As AFCCA previously recognized, "errors in records of trial cause delays in appellate review." *Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17. This is a case in point. Because computer discs containing two important attachments to a prosecution exhibit were defective, AFCCA remanded the case to the trial level for correction. *Turtu*, 2025 CCA LEXIS 300, at *1, 4–5; Appendix at 7. The case was redocketed 46 days later. *United States v. Turtu*, No. ACM 40649 (f rev) (A.F. Ct. Crim. App. Aug. 15, 2025) (notice of docketing). That delay is directly attributable to the Government's failure to meet its legal requirement to provide a complete record of trial to AFCCA. *See United States v. Hernandez*, No. ARMY 20210429, 2024 CCA LEXIS 183, at *4 (A. Ct. Crim. App. Apr. 22, 2024) ("The timely preparation of the record remains the responsibility of the government.").

[8] The naval justice appellate system operates at a departmental level rather than military service level. The Marine Corps' FY 2025 military justice report included the same three cases that had exceeded the 150-day standard as the Navy report. Headquarters United States Marine Corps Judge Advocate Division, U.S. Marine Corps Report on Military Justice for Fiscal Year 2025 at 1–2 (Dec. 31, 2025), *available at* https://www.nimj.org/uploads/1/3/5/5/135587129/usmc_-_fy25_146a_report_-_signed.pdf.

Appellant argued below that AFCCA should provide Article 66(d)(2) sentence relief as a result of the 46 days of unreasonable delay arising from the remand to correct the defective record of trial. Appellant's Br. at 11–14. AFCCA denied that request, stating that it did "not find unreasonable delay." Appendix at 8.

Contrary to AFCCA's approach in this case, delay resulting from the Government's failure to meet its obligation to provide a complete record of trial to a Court of Criminal Appeals is inherently unreasonable. AFCCA abused its discretion by reaching its decision on a basis that "is unreasonable in light of the law and facts." *Navarette*, 81 M.J. at 405. This Court should grant review to ensure that in both this case and future cases, AFCCA understands that delay resulting from a remand to correct a defective record of trial is per se unreasonable.

Curiously, the decision below also concluded that the other ten cases AFCCA remanded during FY 2024 due to defective records of trial are not "relevant to the analysis of this case." Appendix at 10. That approach conflicts with previous AFCCA case law that considered evidence of institutional neglect as a factor in determining whether to grant relief for post-trial delay absent a showing of actual prejudice. *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). While *Gay* predated the current Article 66(d)(2), AFCCA has continued to apply the *Gay* factors in cases analyzed under that statutory provision. *E.g.*, *United States v. Livak*, 80 M.J. 631, 634 (A.F. Ct.

Crim. App. 2020); *United States v. Menard*, No. ACM 40496, 2025 CCA LEXIS 137, at *53 (A.F. Ct. Crim. App. Mar. 28, 2025), *review granted on other grounds*, 86 M.J. 242 (C.A.A.F. 2025). Yet, in this case, AFCCA found compelling evidence of institutional neglect to be irrelevant. Appendix at 10. Thus, the decision below conflicts with decisions of other panels of the same court. *See* C.A.A.F. R. 21 (b)(5)(B).

This case illuminates a reason for the Air Force's wretched post-trial processing performance. "You get what you tolerate." KEVIN G. SLATER, OLD SCHOOL IS GOOD SCHOOL: "BACK TO BASICS" LEADERSHIP LESSONS 14 (2011). In too many cases, including this one, AFCCA has tolerated shoddy post-trial processing and the resulting delays. The predictable consequence is a surfeit of defective records of trial and burgeoning appellate delay. By granting review, this Court would help send a message as to what will—and will not—be tolerated within the military justice system.

Respectfully Submitted,

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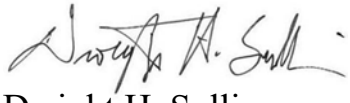

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Certificate of Filing and Service

I certify that the foregoing was electronically filed with the Court, and a copy served on the Air Force Government Trial & Appellate Operations Division at af.jajg.afloa.filng.workflow@us.af.mil on April 1, 2026.

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APPENDIX

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

No. ACM 40649 (f rev)

UNITED STATES
Appellee

v.

Gavin D. TURTU
Senior Airman (E-4), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary
Upon Further Review

Decided 14 January 2026

Military Judge: David M. Cisek (trial); Tiny L. Bowman (remand).

Sentence: Sentence adjudged 2 April 2024 by GCM convened at Little Rock Air Force Base, Arkansas. Sentence entered by military judge on 19 July 2024: Dishonorable discharge, confinement for 24 months, and reduction to E-1.

For Appellant: Major Jordan L. Grande, USAF; Frank J. Spinner, Esquire; Dwight H. Sullivan, Esquire.

For Appellee: Colonel G. Matt Osborn, USAF; Colonel Matthew Talcott, USAF; Lieutenant Colonel Thomas J. Alford, USAF; Lieutenant Colonel Jenny A. Liabenow, USAF; Major Vanessa Bairos, USAF; Major Regina Henenlotter, USAF; Major Jocelyn Q. Wright, USAF; Captain Catherine D. Mumford, USAF; Mary Ellen Payne, Esquire.

Before JOHNSON, RAMÍREZ, and KEARLEY, *Appellate Military Judges*.

Judge RAMÍREZ delivered the opinion of the court, in which Chief Judge JOHNSON and Judge KEARLEY joined.

RAMÍREZ, Judge:

A military judge sitting as a general court-martial convicted Appellant, in accordance with his pleas and pursuant to a plea agreement, of four specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b.[1] The military judge sentenced Appellant to a dishonorable discharge, confinement for 24 months, and reduction to the grade of E-1.[2] The convening authority took no action on the findings, but granted deferment and waiver of automatic forfeitures.

Appellant raises two issues on appeal, which we have rephrased: (1) whether the sentence is inappropriately severe, and (2) whether there is any unreasonable delay warranting appropriate sentencing relief pursuant to Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

As discussed below, we find no error that materially prejudiced Appellant's substantial rights, and we affirm the findings and sentence.

I. BACKGROUND

Appellant entered the Air Force in 2016. At the time of his offenses, Appellant was stationed at Little Rock Air Force Base (AFB), Arkansas. By the winter of 2022, he was married with three children. His eldest, a son, was born on 13 June 2021. Appellant and his wife then had twin girls, born on 24 November 2022. However, the girls were born at 36 weeks of gestational age.

Less than a month after the girls were born, Appellant and his wife traveled from Arkansas to Kansas to spend the holidays with family from 16 December 2022 to 26 December 2022. During this trip, Appellant became frustrated multiple times. His frustration manifested in various ways. On at least one occasion Appellant smothered the twins' faces into his shoulder or aggressively patted their backs while they cried. On another occasion, when one of the twins resisted being fed from her bottle, Appellant used his hands to forcibly restrain her head. Appellant would also carry the newborn girls under his arm like footballs, stacking them on top of each other.

On multiple occasions during the charged time frame, while Appellant was changing the twins' diapers, he used excessive or unreasonable force. By way of example, Appellant would grab the infant by the ribs, hold her down, and

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

[2] Appellant was credited with six days of pretrial confinement.

squeeze her ribs to the point at which the infant child would be unable to move. This conduct resulted in Appellant breaking several ribs of each twin girl. However, things got worse.

On the evening of 26 December 2022, when Appellant and his family returned to their home on base, Appellant's wife heard one of the twins crying. She went to where the crying was coming from and when she opened the door, she saw Appellant strike the baby in the face. Appellant's wife immediately called 911. When civilian law enforcement arrived, Appellant admitted to striking that twin that evening. However, he lied about previously injuring the other twin. In reality, Appellant had hit the other twin in the head before that night. He had also broken the ribs of each of the twins by applying significant force on their chests. According to Appellant, the girls weighed "somewhere between four and a half to five pounds" at the time. Appellant was arrested that night.

After Appellant was arrested, the twins were taken to Arkansas Children's Hospital, where they were evaluated by a board-certified child abuse pediatrician. The evaluation found that one of the twin girls had a bruise on her left cheek; a bruise on her right cheek near her ear; anterior/lateral right side rib fractures of ribs 4 and 5; anterior/lateral left side rib fractures of ribs 5 and 6; anterior/lateral left side rib fractures of ribs 6 and 7; and a possible anterior/lateral right side rib fracture of rib 6. During Appellant's providence inquiry, he admitted that he caused all of these injuries.

Appellant further admitted the other twin girl had a bruise on her left cheek; anterior/lateral right side rib fractures of ribs 3, 4, 5, 6, and 7; a possible fracture in rib 8; anterior/lateral left side rib fractures in ribs 3, 4, 5, 6, and 7; lacerations and hematomas on her liver; and a possible adrenal (glands located atop each kidney) hemorrhage. Other physicians confirmed the rib fractures on both girls.

According to medical professionals, neither twin had any medical or genetic condition that would cause or contribute to their injuries. Another doctor provided the opinion that "[r]ib fractures are very highly associated with abusive trauma in otherwise healthy children, given that the significant amount of force needed to produce them far exceeds the forces involved in normal, reasonable handling of an infant." Additionally, "[t]here was no callus formation over any of the rib fractures, and therefore these fractures were likely no more than a week to ten days old at the most." As to the liver laceration, the same doctor opined that "a single, violent strike to the abdomen" was the most likely cause.

Appellant was then charged with five specifications of domestic violence of his twin daughters. As part of a plea agreement, he pleaded guilty to four of

the specifications associated with the breaking of the ribs and the striking of each twin girl's head, with the remaining specification concerning the liver laceration withdrawn and dismissed with prejudice.

II. DISCUSSION

A. Sentence Severity

1. Additional Background

Appellant pleaded guilty pursuant to a plea agreement. The agreement provided that (1) for each specification to which Appellant pleaded guilty he would receive a term of confinement between 6 and 24 months; (2) the confinement for each specification would run concurrently with each other specification; and (3) the military judge was required to adjudge at least a bad-conduct discharge, but a dishonorable discharge was authorized.

During the presentencing portion of the court-martial, the Prosecution called a doctor who was a professor of pediatrics at the University of Arkansas for Medical Sciences and the associate director of the Team for Children at Risk at Arkansas Children's Hospital. She was qualified as an expert in the fields of general pediatrics and child abuse pediatrics. However, she also testified as a fact witness, as she treated both of Appellant's victims. The doctor explained that

> it requires an excessive and violent degree of force to break infant ribs. It's not at all easy to do. So these are injuries that have resulted from a high-force event. And it's so difficult to break infant ribs that we do not see rib fractures in minor accidents that infants this young can sustain.

She also discussed the trauma the girls went through as a result of their injuries. The doctor concluded that "any child who has a diagnosis of physical abuse in infancy is at elevated risk of future developmental delays and adverse psychological outcomes . . . ."

Appellant called his squadron commander from Little Rock AFB to testify. The commander informed the military judge that there were no significant adverse impacts on the unit directly and immediately resulting from Appellant's crimes. He also opined that Appellant could be rehabilitated. Appellant also called his wife, who said that by the time of the court-martial, she trusted him with the children again, although she did admit to filing for divorce. Finally, Appellant submitted two letters. One was labeled "psychological treatment summary and response" from a "licensed psychologist." The other letter was an affidavit from a clinical and forensic psychologist. In the treatment summary and response, the licensed psychologist saw Appellant post-criminal conduct

and stated Appellant attended all sessions, completed his homework, and "showed tremendous growth during the therapy experience and demonstrated a willingness and ability to help others regulate his emotions." The clinical and forensic psychologist did not see Appellant, but instead reviewed his mental health records. According to the affidavit, Appellant made significant progress in his mental health treatment, post-criminal offense, and this progress "reflects early steps to change which typically are the precursors to a long-term positive prognostic trajectory from a rehabilitative perspective."

After Appellant provided the military judge his unsworn statement, the Prosecution and the Defense made sentencing arguments. Senior trial counsel asked that Appellant be sentenced to 24 months' confinement, reduction to E-1, total forfeiture of pay, and a dishonorable discharge. Trial defense counsel asked the military judge to sentence Appellant to a bad-conduct discharge, "confinement that is significantly lower than 24 months," reduction to E-1, and a reprimand. The military judge sentenced Appellant to a dishonorable discharge, confinement for 24 months for each specification to run concurrently, and reduction to the grade of E-1.

On appeal, Appellant maintains that "where the sentence includes confinement for twenty-four months and reduction to the grade of E-1, a dishonorable discharge rather than a bad-conduct discharge is not 'necessary' to promote justice or to maintain good order and discipline in the armed forces." As such, according to Appellant, his sentence is inappropriately severe. Appellant argues that a dishonorable discharge was not necessary because his victims have physically healed and his crimes did not affect the mission, discipline, or efficiency of the command. Additionally, Appellant contends that "coupled with two years of confinement, a dishonorable discharge rather than a bad-conduct discharge is not 'necessary' to reflect the seriousness of the offenses." Finally, Appellant claims that "[t]he portion of the sentence providing for a dishonorable discharge rather than a bad-conduct discharge violates Article 56(c)(1)[, UCMJ, 10 U.S.C. § 856(c)(1),] and [Rule for Courts-Martial (R.C.M.)] 1002(f)." As explained below, we disagree.

2. Law

This court reviews issues of sentence appropriateness de novo. *United States v. Guinn*, 81 M.J. 195, 199 (C.A.A.F. 2021). We may affirm only so much of the sentence as we find correct in law and fact. Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1).

When we review sentences for appropriateness, we are to ensure that an appellant receives the punishment he deserves. *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). This is based on individualized consideration of the specific appellant, including his character as well as the nature and

seriousness of the offense. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). Although this court is empowered to "do justice," and has broad discretion in determining whether a particular sentence is appropriate, it is not authorized to grant mercy. *See Guinn*, 81 M.J. at 201, 203 (citing *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010)).

When conducting our review, we not only consider the appropriateness of the entire sentence, but also "must consider the appropriateness of each segment of a segmented sentence." *United States v. Flores*, 84 M.J 277, 281 (C.A.A.F. 2024). Additionally, a sentence within the range of a plea agreement may still be inappropriately severe. This is because our authority to review a case for sentence appropriateness "reflects the unique history and attributes of the military justice system, [and] includes but is not limited to, considerations of uniformity and evenhandedness of sentencing decisions." *United States v. Sothen*, 54 M.J. 294, 296 (C.A.A.F. 2001) (citations omitted). As such, we may affirm only as much of the sentence as we find correct in law and fact and determine should be approved on the basis of the entire record. *Id.*; Article 66(d)(1), UCMJ.

R.C.M. 1002(a) provides,

> [T]he sentence to be adjudged is a matter within the discretion of the court-martial. A court-martial may adjudge any punishment authorized in [the Manual for Courts-Martial] in order to achieve the purposes of sentencing under [R.C.M. 1002(f)], including the maximum punishment or any lesser punishment, or may adjudge a sentence of no punishment . . . ,

unless limited by a mandatory minimum punishment or plea agreement.

R.C.M. 1002(f) explains "the court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the United States Armed Forces . . . ."

R.C.M. 1003(b)(8)(C) describes the purpose of a bad-conduct discharge as "a punishment for bad-conduct rather than as a punishment for serious offenses of either a civilian or military nature." On the other hand, R.C.M. 1003(b)(8)(B) provides that a dishonorable discharge is for "those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized in civilian jurisdictions as felonies, or of offenses of a military nature requiring severe punishment . . . ."

3. Analysis

After individualized consideration of Appellant, including his character as well as the nature and seriousness of the offenses, we do not find 24 months confinement and a dishonorable discharge inappropriate, even when coupled

with the unchallenged reduction in rank. As the medical doctor explained to the military judge, "[I]t requires an excessive and violent degree of force to break infant ribs. It's not at all easy to do." The injuries that Appellant's two infant daughters sustained "resulted from a high-force event." Further, Appellant struck both of his daughters in the head and face area. To put things into perspective, Appellant was a big man according to the photos in evidence, while his twin infants were only about a month old, were born prematurely, and weighed only a few pounds at the time of his offenses. They were the most vulnerable of victims. They could not run away. They could not speak to call for help. They could not avoid Appellant's horrific violence.

The nature and circumstances of the domestic violence offenses are recognized in civilian jurisdictions, and Arkansas specifically, as a felony. *See* AR Code § 5-26-306. The impact on the victims is also real. While Appellant's wife testified that their daughters had healed, the doctor made it clear that "any child who has a diagnosis of physical abuse in infancy is at elevated risk of future developmental delays and adverse psychological outcomes." We have also considered that Appellant's commander testified that there were no significant adverse impacts on the unit directly and immediately resulting from Appellant's crimes.

Additionally, we find that the 24 months of confinement, the reduction in rank, and the dishonorable discharge were not inappropriate to promote respect for the law; provide just punishment for the offense; and promote adequate deterrence of misconduct. We do not find the 24 months of confinement inappropriate to protect others from further crimes by Appellant and to rehabilitate Appellant. Therefore, we grant no relief.

B. Post-Trial Delay

1. Additional Background

Appellant was sentenced on 2 April 2024. The record of trial was docketed with this court approximately four months later, on 29 July 2024. Appellant, through counsel, requested, and was granted, eight enlargements of time in which to file his assignments of error, opposed by the Government, totaling approximately 319 days.

On 22 May 2025, Appellant moved this court "to compel the Government to to produce complete working copies of Attachments 4 and 9 of Prosecution Exhibit 1," an audio recorded pretext phone call between Appellant and his wife, and body camera footage of the police officer who responded to Appellant's wife's 911 call. The discs provided with the record of trial were not functional. However, on 30 June 2025, we ordered the case be remanded for correction in accordance with the provisions of R.C.M. 1112; the Government complied, and the case was re-docketed on 15 August 2025. Appellant then filed his brief on

14 October 2025, the Government filed its answer on 13 November 2025, and Appellant submitted his reply brief on 19 November 2025.

Appellant requests we set aside his dishonorable discharge, pursuant to Article 66(d)(2), UCMJ, because of post-trial delay by the Government for failing in its responsibilities in ensuring complete and operable versions of Attachments 4 and 9 to Prosecution Exhibit 1 when preparing the record of trial. Appellant's position is twofold. First, he claims that because a remand was required, this constitutes "unreasonable delay." Second, he argues that the "Government" has a practice of providing incomplete records of trial to this court, and this should be sufficient to provide relief. As we explain below, we do not find unreasonable delay.

2. Law

Those seeking redress stemming from courts-martial convictions have a due process right to timely review and appeal of their cases. *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006). Whether an appellant is entitled to relief for post-trial delay is an issue we review de novo. *United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020).

In *Moreno*, the United States Court of Appeals for the Armed Forces identified thresholds for facially unreasonable delay during three particular segments of the post-trial and appellate process. 63 M.J. at 141–43. Specifically, *Moreno* established a presumption of facially unreasonable delay where: (1) the convening authority did not take action within 120 days of the completion of trial, (2) the record was not docketed with the service court within 30 days of the convening authority's action, or (3) the service court did not render a decision within 18 months of docketing. *Id*. at 142.

In *Livak*, we recognized that "the specific requirement in *Moreno* which called for docketing to occur within 30 days of action no longer helps us determine an unreasonable delay under the new procedural rules." 80 M.J. at 633. Accordingly, we established an aggregated sentence-to-docketing 150-day threshold for facially unreasonable delay in cases that were referred to trial on or after 1 January 2019. *Id*. (citation omitted).

Where there is a facially unreasonable delay, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): "(1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice [to the appellant]." *See also Moreno*, 63 M.J. at 135 (citations omitted) (holding that "[w]hile *Barker* addressed speedy trial issues in a pretrial . . . context, its four factor analysis has been broadly adopted for reviewing post-trial delay due process claims").

In *Barker*, the United States Supreme Court also identified three types of cognizable prejudice for purposes of an appellant's due process right to timely

post-trial review, which was explained in *Moreno*: (1) oppressive incarceration; (2) "particularized anxiety or concern that is distinguishable from the normal anxiety experienced by prisoners awaiting an appellate decision;" and (3) impairment of the appellant's grounds for appeal or ability to present a defense at a rehearing. *Moreno*, 63 M.J. at 138–40 (citations omitted). "Of these, the most serious is the last [type], because the inability of a defendant adequately [to] prepare his case skews the fairness of the entire system." *Barker*, 407 U.S. at 532.

Additionally, where an appellant has not shown prejudice from the delay, we cannot find a due process violation unless the delay is so egregious as to "adversely affect the public's perception of the fairness and integrity of the military justice system." *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006).

Independent of any due process violation, this court may provide appropriate relief where there is "excessive delay in the processing of the court-martial after the judgment was entered into the record." *United States v. Valentin-Andino*, 85 M.J. 361, 364 (C.A.A.F. 2025) (citing Article 66(d)(2), UCMJ). If we conclude "relief is warranted for excessive post-trial delay under Article 66(d)(2), [UCMJ,] that relief must be 'appropriate,' meaning it must be suitable considering the facts and circumstances surrounding that case." *Id*. at 367. However, we are not required to provide relief that is "objectively meaningful," nor are we required to explain our reasoning regarding the relief we do provide. *Id*.

3. Analysis

From the date Appellant was sentenced to the original docketing of his case, 118 days had passed—32 days less than the 150-day *Livak* standard. Even after docketing, the court granted Appellant eight enlargements of time—totaling approximately 319 days—and then ordering the case be remanded for correction of the record—resulting in another 46 days to pass—Appellant still filed his brief and this court issued its opinion within 18 months from the original docketing date as recognized in *Moreno*, 63 M.J. at 142.

While Appellant does not allege facially unreasonable delay, upon review of the matter, we do not find Appellant suffered any cognizable prejudice from the delay as described in *Barker*. Appellant was not subject to oppressive incarceration, as we found his sentence legally appropriate. There is no evidence, nor does Appellant allege, that he suffered particularized anxiety or concern related to the delay. In addition, any delay in this case did not harm Appellant's ability to present an appeal, especially given Appellant's many requests for enlargements of time in filing his appellate brief. Finally, absent a finding of prejudice to Appellant under the fourth *Barker* factor, Appellant is not entitled to relief for a due process violation because we find that the delay was not

so egregious as to "adversely affect the public's perception of the fairness and integrity of the military justice system." *Toohey*, 63 M.J. at 362.

Appellant, however, does cite ten "cases in which this [c]ourt was compelled to remand a record for correction during Fiscal Year 2025." We are not persuaded that those cases are relevant to the analysis of this case. Considering all the factors, we simply cannot find "excessive" delay in the processing of this court-martial record after the judgment was entered into the record, which would warrant relief under Article 66(d)(2), UCMJ.

III. CONCLUSION

The findings as entered are correct in law. Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). *Manual for Courts-Martial, United States* (2024 ed.). In addition, the sentence as entered is correct in law and fact, and no error materially prejudicial to Appellant's substantial rights occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the findings and sentence are **AFFIRMED**.

FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court