IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES Appellee v. Staff Sergeant (E-6) **DANIEL J. VALDEZ** United States Army Appellant	REPLY BRIEF ON BEHALF OF APPELLANT Crim. App. Dkt. No. 20220274 USCA Dkt. No. 26-0122/AR

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TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES:

Granted Issues

I. WHAT IS THE PROPER STANDARD OF REVIEW FOR THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES 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?

II. WHETHER APPELLANT IS ENTITLED TO RELIEF FOR 952 DAYS OF POST-TRIAL DELAY WHERE THE GOVERNMENT AGREED APPELLANT'S SENTENCE SHOULD BE SET ASIDE.

Argument

A. Sentence Appropriateness is No Longer the Correct Lens to Analyze Claims of Excessive Post-Trial Delay.

The Government argues that Courts of Criminal Appeal continue to review claims of excessive post-trial delay under a sentence appropriateness lens. (Gov't Br. at 7–8, 13). The argument is misguided.

Appellant agrees with the Government to the extent that Courts of Criminal Appeal have *historically* viewed excessive post-trial delay under a sentence appropriateness framework. (Gov't Br. at 7–8). But that framework ceased with the implementation of the Military Justice Act of 2016 (MJA 16). Congress specifically implemented a new statute to address excessive post-trial delay separate and distinct from the service courts' pre-MJA 16 ability to review for sentence appropriateness. With the creation of Article 66(d)(2), Congress allowed for "appropriate relief" if an accused demonstrated excessive delay. It did not, however, dictate that sentence relief was the *only* type of relief.

Further, the Government relies on *United States v. Abdullah* for the proposition that the service courts still review post-trial delay claims under Article 66(d)(2) under a sentence appropriateness lens. 2024 CCA LEXIS 479 (A. Ct. Crim. App., Nov. 5, 2024) (pet. granted, argued Dec. 9, 2025). But *Abdullah* was decided prior to this Court's decision in *Valentin-Andino*, which made clear that a Court of Criminal Appeals' ability to award "appropriate relief" for excessive post-

trial delay is found in Article 66(d)(2), nor is excessive delay purely analyzed for sentence appropriateness. 85 M.J. 361, 363 (C.A.A.F. 2025).

The Government's current argument to cabin available relief to sentence appropriateness runs afoul of the plain language of Article 66(d)(2) ("However, the Government differentiates from Appellant because the broad power under Article 66(d)(2) remains grounded in a CCA's 'awesome, plenary, *de novo* power of review' for sentence appropriateness.").[1] (Gov't Br. at 11). There is no delineation found in Article 66(d)(2) that requires a CCA to only provide sentence relief or analyze post-trial delay under a sentence appropriateness framework. While *Valentin-Andino* found "appropriate relief" did not necessarily equate "meaningful relief," it did not go so far as to equate "appropriate relief" with "sentence relief." 85 M.J. at 367.

B. The Army Court's Decision Was Not Only an Abuse of Discretion, but an Obvious Miscarriage of Justice.

Appellant also agrees with the Government in so much as this Court may review the Army Court's decision not only for an abuse of discretion, but for "an obvious miscarriage of justice" as well. (Gov't Br. at 11); *United States v. Armsbury*, 2026 CAAF LEXIS 274, at *7 (C.A.A.F., Mar. 24, 2026); *United States*

[1] The Government did not provide a citation for the quote, but Appellant believes it is from *United States v. Cole,* 31 M.J. 270, 272 (C.M.A. 1990), which the Government cited earlier in its brief. (Gov't Br. at 8). Of note, this case was decided in 1990, not in 2024 as cited in the Government's brief.

v. Swisher, 85 M.J. 1, 4 (C.A.A.F. 2024) (internal quotations omitted). Here, both occurred.

The analysis as to a miscarriage of justice often ends before it begins. In cases such as *Armsbury*, *Swisher*, and *Behunin*, this Court found the CCA did not abuse its discretion, which foreclosed discussion on the miscarriage of justice. However, what is glaringly distinct between those cases and this case is that the Court had before it well-reasoned elucidation from the lower courts. Not so here.

Affirming the Army Court's decision would constitute a miscarriage of justice. The Army Court provided no analysis as to why, when confronted with "extraordinary" delay and an agreement by the parties as to specific relief, it declined to honor the agreement and provide relief. This Court cannot even be certain the Army Court found excessive delay based on the lack of commentary.

C. The Government Asks This Court to Make Far Too Many Assumptions.

Despite the Army Court's silence, the Government asks this Court to "assume" in several unsubstantiated ways. First, it asks this Court to assume the Army Court found excessive delay, because it "would be patently unreasonable for any court to find that the delay in this case for a relatively routine record of trial was not excessive." (Gov't Br. at 14). While Appellant concurs the delay is excessive, neither the Government nor Appellant—nor this Court for that matter—can be certain what the Army Court concluded. Its summary affirmance left the

parties without such knowledge and to assume such a finding occurred is unsupported by the record.

The Government then asks this Court to assume the Army Court "weighed the post-trial delay suffered with the totality of the entire appellate record." (Gov't Br. at 15). Yet again, the Government is unable to point to where in the Army Court's decision it contemplated the "totality of the entire appellate record," or whether indeed it weighed any other factor at all. The Army Court used generic language indicating it conducted its statutorily mandated legal and factual sufficiency review pursuant to Article 66(d)(1) ("On consideration of the entire record, including consideration of the issues personally specified by the appellant, we hold the findings of guilty and the sentence, as entered in the Judgment, correct in law and fact."). (App'x A). But this wording clearly makes no reference to whether the Army Court analyzed excessive delay under Article 66(d)(2). The language of the summary affirmance merely indicates the findings and sentence are correct, but fails to address whether the Army Court found excessive delay or whether appropriate relief was warranted.

This Court, nor the parties, should have to assume what occurred. The Army Court did not place its findings of fact or conclusions of law on the record and therefore, this Court should afford the Army Court very little deference—if any at all.

Further, contrary to what the Government argues, Appellant never stated the lack of reasoning on the record was an abuse of discretion in and of itself. (Gov't Br. at 14). Rather, Appellant argued this Court should not afford the Army Court the "broad discretion" it usually enjoys for its Article 66 review because of its failure to place its findings and reasonings on the record. *United States v. Behunin*, 83 M.J. 158, 161 (C.A.A.F. 2023). It is not the lack of exposition that constitutes an abuse of discretion, but rather the Army Court's failure to address the issue at all. Indeed, this silence is precisely the reason the Government is so reliant on assumptions; it, too, is unaware of what the Army Court found and concluded.

D. The Government's Brief Does Not Meaningfully Engage With the Second Granted Issue, Nor Does It Reconcile Its Current Position With the Concession It Advanced at the Army Court.

First, the Government failed to fully address the underlying premise of the question – how this Court should approach the issue when the Government agreed at the Army Court that 1) excessive delay occurred, 2) relief was warranted, and 3) appropriate relief constituted the setting aside of Appellant's sentence. (JA 127). While the Government maintained its concession as to the initial prong of excessiveness, it now appears to balk at its own, previously held position as to warranted relief. No mention of an "agreement", "concurrence," or "concession" as to relief or remedy can found in the Government's brief to this Court.

The only reference to its original agreement is when it argued the Army Court did not abuse its discretion by not setting aside the sentence, "notwithstanding the Government's position." (Gov't Br. at 15). This Court sought briefing as to its role when the parties agree on an error and appropriate relief, but the service court (without providing reasoning) declined to adopt the parties' agreed upon request. The Government has failed to answer the heart of the question.

Second, the Government then appears to analyze Appellant's post-trial delay claims under both an Article 66(d)(2) and a Due Process lens, despite this Court not seeking this analysis or argument. (Gov't Br. at 13–17). The Government argued that "Appellant has abandoned" his claim of relief for a Due Process violation. (Gov't Br. at 16–17). However, in Appellant's original brief to this Court, he sought—and continues to seek—relief based on the extraordinarily excessive delay in this case. Appellant's argument for relief, much like the Government's argument that relief was warranted at the Army Court, is not cabined to Article 66(d)(2). To the extent Appellant did not discuss with specificity his Due Process claim, it was because Appellant sought to cogently and concisely answer the granted issues. Further, unlike standards of review and

appropriate relief for excessive delay pursuant to Article 66(d)(2), an appellant's ability to seek relief for a Due Process violation is a settled area of law.[2]

The Government adopts a stance of support for the Army Court, despite the Army Court declining its proposed relief. According to the Government, the Army Court's declination is "not unreasonable and does not constitute an abuse of discretion." (Gov't Br. at 15). Appellant disagrees. The Army Court failed to address the agreement, just as the Government now fails to as well. The Government's unexplained departure from its position at the Army Court undermines the persuasiveness of its current argument.

[2] Appellant argued a Due Process violation in his supplement to the petition to this Court. Appellant stands ready to provide further briefing should it be ordered by this Court.

Conclusion

This Court should grant the parties' requested relief from the lower court and set aside Appellant's sentence.

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Certificate of Compliance with Rules 24(c) and 37

1. This Reply Brief on Behalf of Appellant complies with the type-volume limitation of Rule 24(c) because it contains 1,656 words.

2. This Reply Brief on Behalf of Appellant complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Valdez, Crim. App. Dkt. No. 20220274, USCA Dkt. No. 26-0122/AR was electronically filed with the Court and Government Appellate Division on May 21, 2026.

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