

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,)	APPELLANT’S REPLY BRIEF
<i>Appellee</i>)	
v.)	Crim. App. Dkt. No. ACM 40372
)	(f rev)
)	
CARSON C. CONWAY)	USCA Dkt. No. 24-0229/AF
Captain (O-3))	
United States Air Force,)	September 29, 2024
<i>Appellant.</i>)	

Appellant, Captain (Capt) Carson C. Conway, pursuant to Rule 21(c)(2) of this Court’s Rules of Practice and Procedure, files this reply to the Appellee’s Answer of September 24, 2024 (Ans.). Appellant stands behind the arguments in the Supplement to the Petition for Grant of Review, filed on September 12, 2024 (Supp.), and in reply to the Answer submits additional arguments for the third issue presented.¹

¹ Although not relevant to Issue III, the Government’s statement of facts recites that the maximum punishment “for Knowingly Making a False Written Statement in Connection with the Acquisition of a Firearm is forfeiture of all pay and allowances, confinement for one year, and a dismissal. (Ans. at 2–3 (citing *MCM*, pt. IV, ¶ 91.d (2023 ed.)). This is not the correct offense, as Capt Conway pleaded guilty only to reckless completion of the form, conduct which was of a nature to discredit the service, in violation of Article 134, UCMJ, 10 U.S.C. § 934 (2018). (R. a 16; EOJ.) Also, the Government’s citation for the maximum punishment does not exist.

The Government offers what it believes is the better argument in the case; it does not, however, provide a reason this Court should deny review. Indeed, the Answer only underscores that this question needs a resolution that only this Court can provide. No Court of Criminal Appeals (CCA) can opine on this Court's jurisdiction—it is for this Court alone to decide.

In *United States v. Williams*, No. 24-0015, 2024 CAAF LEXIS 501, at *10 (C.A.A.F. Sep. 5, 2024), this Court held it had jurisdiction to vacate the Army Court of Criminal Appeals' ultra vires act of using its power under Article 66, UMCJ, 10 U.S.C. § 866 (Supp. III 2019-2022), to modify a statement of trial results (STR). This Court focused on the language in Article 67, UCMJ, 10 U.S.C. § 867(c)(1)(B) (Supp. III 2019-2022), which provides this Court with authority to act with respect to “a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the [CCA].” *Williams*, 2024 CAAF LEXIS 501, at *10. This logic would seem to allow this Court to act on the entry of judgment here which was, in effect, affirmed by the CCA.

The Government chiefly argues that such power would render superfluous Article 67(c)(1)(A), UCMJ, which grants this Court authority

to act with respect to “the findings and sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the [CCA].” (Ans. at 6.) But both provisions can coexist. Article 67(c)(1)(A), UCMJ, authorizes action with respect to findings and sentence only. As this Court held in *Williams*, the portion of the STR in Block 32 was not a finding or sentence. 2024 CAAF LEXIS 501, at *12–13. Standing alone, Article 67(c)(1)(A), UCMJ, does not grant authority to modify the STR. But the addition of Article 67(c)(1)(B), UCMJ, grants broader authority to act with regard to a military judge’s “decision, judgment, or order.” Article 67(c)(1)(B), UCMJ, need not include the actual findings and sentence, thus the provisions do different work.

If there is a lack of clarity, or surplusage that needs resolution, it is for this Court to decide through a grant of review. That the Government makes only a merits argument accentuates that this is an open question needing resolution. This Court should grant review and provide clarity to the field.

WHEREFORE, Appellant respectfully requests this Honorable Court grant his petition for grant of review.

Respectfully submitted,



MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
U.S.C.A.A.F. Bar No. 36470
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
240-612-4770
matthew.blyth.1@us.af.mil

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Rule 21(b) because it contains 587 words.
2. This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in Century Schoolbook font, using 14-point type with one-inch margins.



MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
U.S.C.A.A.F. Bar No. 36470
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
240-612-4770
matthew.blyth.1@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that an electronic copy of the foregoing was sent via electronic mail to the Court and served on the Air Force Government Trial and Appellate Operations Division on September 29, 2024.



MATTHEW L. BLYTH, Maj, USAFR
Appellate Defense Counsel
U.S.C.A.A.F. Bar No. 36470
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Rd, Ste. 1100
Joint Base Andrews NAF, MD 20762
240-612-4770
matthew.blyth.1@us.af.mil