

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

UNITED STATES,

Appellee,

v.

Staff Sergeant (E-5)
ZHUO H. ZHONG,
United States Air Force,

Appellant.

**APPELLANT’S REPLY TO
UNITED STATES’ ANSWER
TO PETITION FOR GRANT
OF REVIEW**

Crim App. Dkt. No. 40441

USCA Dkt. No. 25-0011/AF

November 25, 2024

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES COURT APPEALS
FOR THE AREMD FORCES:**

Appellant, Staff Sergeant (SSgt) Zhuo H. Zhong, pursuant to Rule 21(c)(2) of this Court’s Rules of Practice and Procedure, files this Reply to the Government’s Answer to the Petition for Grant of Review, dated November 18, 2024 (“Ans.”). In addition to the arguments in his Supplement to the Petition for Grant of Review, filed on November 5, 2024 (“Supp.”), SSgt Zhong submits the following argument for the issue listed below.

IV.

Whether, in light of United States v. Williams, ___ M.J. ___, CAAF LEXIS 501 (C.A.A.F. 2024), the Air Force Court of Criminal Appeals had jurisdiction under

Article 66(d)(2), Uniform Code of Military Justice, to provide appropriate relief for the erroneous firearm prohibition on the indorsement to the entry of judgment.

In his brief before the Air Force Court of Criminal Appeals (AFCCA), SSgt Zhong challenged the constitutionality of the firearms prohibition imposed on him without specifying a particular statutory subsection under which the AFCCA should review the matter. *United States v. Zhong*, No. ACM 40441, Brief on Behalf of Appellant, May 9, 2024, at 21–25. Thus, the Government’s contention that he argued “that the court had jurisdiction to decide that issue under Article 66(d)(1)” is inaccurate. Ans. at 4.

Article 866(d)(2), Uniform Code of Military Justice, 10 U.S.C. § 866(d)(2), allows the AFCCA to “provide appropriate relief if the accused demonstrates error . . . in the processing of the court-martial after the judgment was entered into the record.” This applies to any case before the AFCCA under Article 866(b), including this case, in which the appeal fell under Article 866(b)(3), 10 U.S.C. § 866(b)(3), because SSgt Zhong received a bad-conduct discharge. 10 U.S.C. § 866(d)(2); R. at 481. The

statute does not require an appellant to specify that he seeks relief under Article 866(d)(2) as opposed to Article 866(d)(1).

In the Air Force, the first indorsement to the entry of judgment, which notes the firearms prohibition, gets signed after the entry of judgment. Supp. at 21. Thus, by challenging the constitutionality of a notation on the first indorsement, SSgt Zhong demonstrated error “in the processing of the court-martial after the judgment was entered into the record.” 10 U.S.C. § 866(d)(2). The AFCCA effectively affirmed this error when it stated the issue “warrant[ed] neither discussion nor relief.” *United States v. Zhong*, No. ACM 40441, 2024 CCA LEXIS 344, at *2 (A.F. Ct. Crim. App. Aug. 21, 2024). Unlike *United States v. Williams*, ___ M.J. ___, 2024 CAAF LEXIS 501 (C.A.A.F. 2024), SSgt Zhong raised an error the AFCCA could have corrected under Article 866(d)(2), and that court’s failure to correct it enables review by this Court.

WHEREFORE, SSgt Zhong respectfully requests that this Court grant his Petition for Grant of Review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frederick J. Johnson", with a long horizontal flourish extending to the right.

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Certificate of Compliance

1. This brief complies with the type-volume limitation of Rule 21(b) because it contains 501 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.

Respectfully submitted,

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Certificate of Filing and Service

I certify that an electronic copy of the foregoing was sent via electronic mail to the Court and electronically served on the Air Force Government Trial and Appellate Operations Division at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on November 25, 2024.

Respectfully submitted,

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