

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

UNITED STATES,	) SUPPLEMENT TO THE PETITION
<i>Appellee,</i>	) FOR GRANT OF REVIEW
v.	)
	) Crim. App. Dkt. No. 20240289
ELVIS A. PUENTE-GONZALEZ,	)
Master Sergeant (E-8),	) USCA Dkt. No. 26-0240/AR
United States Army,	)
<i>Appellant.</i>	) Filed August 10, 2026

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

Whether a sexual abuse of a child conviction can be found legally sufficient when the alleged victim testified under oath that no sexual abuse occurred at the time and location alleged in the relevant specification?

Statement of Statutory Jurisdiction

The Army Court of Court of Criminal Appeals (ACCA) 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

On May 30, 2024, a military judge sitting as a general court-martial convicted appellant, Master Sergeant Elvis A. Puente-Gonzalez, contrary to his pleas, of three specifications of Article 120b (lewd act of a child), Uniform Code of Military Justice [UCMJ], two specifications of Article 120 (abusive sexual contact), UCMJ, and one

specification of 131b (obstruction of justice). (R. at 487-488; Charge Sheet). On May 30, 2024, the military judge sentenced appellant to be reduced to the grade of E-1; to be confined for 24 months for Specification 1 of Charge I; 16 months for Specification 2 of Charge I; 14 months for Specification 3 of Charge I (with the periods of confinement for Specifications 1, 2, and 3 of Charge I to be concurrently served with each other); to be confined 18 months for Specification 1 of Charge II; 18 months for Specification 2 of Charge II (with the periods of confinement for Specifications 1 and 2 of Charge II to be concurrently served with each other, but consecutive to the confinement for Specifications 1, 2, and 3 of Charge I); and to be confined for 3 months for Specification 2 of Charge III. The confinement for Specification 2 of Charge III is to be served consecutive to the other periods of confinement. Finally, the military judge sentenced appellant to be discharged from the service with a bad-conduct discharge.

On July 3, 2024, the convening authority approved the findings and adjudged sentence. (Convening Authority Action). On July 10, 2024, the military judge entered judgment. (Judgment of the Court).

The ACCA issued its opinion affirming the findings and sentence on May 11, 2026. Appendix. Master Sergeant Puente-Gonzalez filed a timely petition for grant of review on July 9, 2026, accompanied by a motion to file the supplement subsequently. The Court granted the motion and authorized Master Sergeant Puente-Gonzalez to file the supplement by July 31, 2026. A motion for a second extension of time was granted

until August 10, 2026.

Statement of the Facts

On February 2, 2024, MSG Puente-Gonzalez made a voluntary incriminating statement while undergoing a background investigation with the United States Customs and Border Protection (hereinafter CBP) where he was seeking future employment after he retired from the Army. (Pros. Ex. 1). The statement described his sexual involvement with AP, his stepdaughter, over a period of years beginning when she was fourteen years old and extending beyond her sixteenth birthday. (Id.). The allegations were captured in the specifications of which he was found guilty under Charges I and II. (Charge Sheet).

On appeal he contests the guilty finding of Specification 3 under Charge I which alleged that he “had touch[ed] her breast, with his hand” between March and December 2022 at or near Fort Leavenworth. When AP testified under oath during cross-examination regarding this specification, she stated that no sexual touching occurred during the charged time period, i.e., from March 2022 to December 2022 while the family was living on Post (Fort Leavenworth), before she turned 16 years old. (R. at 261, 284). In his statement, MSG Puente-Gonzalez says that sexual touching occurred over an extended period of years, including this period, without identifying in any detail specifically when and where all the touchings occurred. (Pros. Ex.1).

Additional facts necessary to the resolution of the issue presented are

addressed in the argument below.

REASONS TO GRANT REVIEW

This Court should grant review because MSG Puente-Gonzalez has been unjustly convicted of an offense in which the alleged victim testified under oath that the offense did not occur as alleged.

A. Standards of Review

The standard for granting review of an issue that an accused raises before this Court is good cause shown. Art. 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3). A Court of Criminal Appeals (CCA) “may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” Art. 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1)(2018). This Court reviews a CCA’s legal insufficiency determination *de novo*.

Questions of legal sufficiency are reviewed *de novo*. *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019). A review for legal sufficiency requires this Court to determine, “whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt.” *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Reasonable inferences are drawn in the prosecution’s favor. *United States v. Robinson*, 77 M.J. 294, 298 (C.A.A.F. 2018).

B. Analysis

This Court should grant review to determine whether the Army Court of Criminal Appeals affirmed a conviction that is not legally sufficient based upon the sworn testimony of the alleged victim that the offense did not occur as alleged.

The defense argued at trial and MSG Puente-Gonzalez now argues on appeal that when AP testified under oath that she was not sexually touched by MSG Puente-Gonzalez during the period alleged and at the location alleged in Specification 3 of Charge I, there was a deficiency of proof that he committed the charged offense as a matter of law and fact. To the extent his statement to the CPB indicated that he touched AP in a sexual way during this period, it is reasonable to infer that his memory was mistaken as to the dates because he had no opportunity to refresh his memory. (Pros. Ex. 1). It is reasonable to conclude that as the alleged victim she would know the dates and places better than him. (R. at 261, 284).

Apparently, no effort was undertaken by the CBP investigator to get more details and further clarity on this point. AP's response on cross-examination did not demonstrate any hesitancy or lack of memory on her part. (Id.). As the evidence stands, the Court would have to find that she was not credible in her testimony when she said under oath there was no sexual touching during the relevant period or at the place in question.

In this context, it is the alleged victim's sworn testimony that supports the conclusion that this specific offense was not committed as alleged. This Court, after giving "appropriate deference" to the trial court in weighing the evidence, would

have to find that her testimony was “against the weight of the evidence” to uphold the conviction of Specification 3 under Charge I.

Therefore, Master Sergeant Puente-Gonzalez respectfully requests that this Honorable Court grant his Petition for Grant of Review.

Respectfully Submitted,

Frank J. Spinner

FRANK J. SPINNER
U.S.C.A.A.F. Bar No. 26210
Attorney at Law
1420 Golden Hills Road
Colorado Springs, Colorado
Email: lawspin@aol.com
(719) 223-7192

Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that I electronically filed a copy of the foregoing with the Clerk of Court on August 10, 2026, and that a copy was also electronically served on the Army Government Appellate Division, usarmy.pentagon.hqda-otjag.mbx.usalsagad@army.mil, on the same date.

Frank J. Spinner

FRANK J. SPINNER
U.S.C.A.A.F. Bar No. 26210
Attorney at Law
1420 Golden Hills Road
Colorado Springs, Colorado
Email: lawspin@aol.com
(719) 223-7192

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Rules 21(b) and 21A because it contains 1395 words and is less than fifteen pages.
2. This brief 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.

Frank J. Spinner

FRANK J. SPINNER
U.S.C.A.A.F. Bar No. 26210
Attorney at Law
1420 Golden Hills Road
Colorado Springs, Colorado
Email: lawspin@aol.com
(719) 223-7192

Counsel for Appellant

APPENDIX

1

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MORRIS, JUETTEN, and MURDOUGH
Appellate Military Judges

UNITED STATES, Appellee
v.
Master Sergeant ELVIS A. PUENTE GONZALEZ
United States Army, Appellant

ARMY 20240289

Headquarters, U.S. Army Combined Arms Center and Fort Leavenworth
Scott A. Oravec and Jacqueline L. Emanuel, Military Judges
Colonel Robert C. Stelle, Special Trial Counsel

For Appellant: Frank J. Spinner, Esquire (on brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Stephen L. Harmel, JA; Major Elizabeth F. Vieyra, JA (on brief).

11 May 2026

DECISION

Per Curiam:

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. Accordingly, those findings of guilty and the sentence are AFFIRMED.*

FOR THE COURT:


JAMES W. HERRING, JR.
Clerk of Court

* The Entry of Judgment is amended to reflect the ACCA Case number as 20240289.