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

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| UNITED STATES,<br>Appellant | **BRIEF ON BEHALF OF APPELLEE** |
| v. | Crim. App. No. ARMY 20220274 |
| Staff Sergeant (E-6)<br>**DANIEL J. VALDEZ,**<br>United States Army,<br>Appellee | USCA Dkt. No. 26-0122/AR |


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**IN THE UNITED STATES COURT OF APPEALS**
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| Staff Sergeant (E-6)<br>**DANIEL J. VALDEZ,**<br>United States Army,<br>Appellant | USCA Dkt. No. 26-0122/AR |

## 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.**

## Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals [Army Court] reviewed this case pursuant to Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866 (2019) [UCMJ]. The statutory basis for this Court's jurisdiction rests upon Article 67(a)(3), UCMJ 10 U.S.C. § 867(a)(3).

## Statement of the Case

On May 19, 2022, a panel with officer and enlisted representation sitting as a special court-martial, convicted Staff Sergeant [SSG] Daniel Valdez [Appellant], contrary to his pleas of one specification of absence without leave, one specification of disrespect to a superior noncommissioned officer, one specification of disrespect to a superior commissioned officer, and one specification of battery upon a spouse, in violation of Article 86, 89, 91, and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 889, 891, and 928 (2019) [UCMJ]. (JA 9; JA 15). On May 20, 2022, the miliary judge sentenced appellant reduction to the grade of E-5 and to perform hard labor without confinement for thirty days. (JA 10; JA 15). On June 6, 2022, the convening authority approved the sentence but took no action on the findings. (JA 12).

On December 9, 2025, the Army Court affirmed the finding of guilty and the sentence. (JA 2). In so doing, the Army Court held the findings of guilty and the sentence to be correct in both law and fact. (JA 2). On March 25, 2026, this Court granted Appellant's petition for grant of review and ordered briefing on the above issues. (JA 1).

## Summary of Argument

While the language in Article 66, UCMJ, has changed, the authority to grant or deny relief for excessive post-trial delay remains grounded in a Court of

Criminal Appeal's [CCA] sentence appropriateness authority. Congress intentionally declined to grant this Court the same authority. As such, this Court's standard of review for a CCA's decision to grant or deny relief for excessive post-trial delay using its Article 66 authority should be limited to the narrow question of whether there has been an obvious miscarriage of justice or abuse of discretion.

This Court provides a large degree of deference to a CCA when it conducts its sentence appropriateness review. As such, Appellant is unable to show the Army Court abused its discretion when weighing Appellant's claims on appeal. Separately, while this Court may evaluate claims of a Due Process violation *de novo*, Appellant is unable to show he suffered prejudice due to the delay in this case. As such, he is unable to establish a Due Process violation occurred in the present case and he is not entitled to relief.

## Statement of Facts

### A. Appellant's Crimes.

Appellant's misconduct spanned an approximate sixteen-month period from July 2020 through November 2021. (JA 6; JA 15). His earliest documented misconduct on the charge sheet occurred in August 2020, during the COVID-19 pandemic, when he left his unit without authorization. At the time, Appellant worked in Pennsylvania. (JA 29). In early August, Appellant claimed his mother

fell ill.[1] (JA 31). He told his co-workers that he submitted a leave request and made appropriate phone calls with his chain of command. (JA 32). However, when Mr. JE, one of the civilians he worked with, contacted Appellant's first sergeant, the first sergeant "had no idea" what Mr. JE was talking about. (JA 35). During a subsequent administrative investigation, Appellant provided an Army leave form signed only by himself. (JA 39). The investigation determined Appellant left his unit without authorization from August 11, 2020, until September 4, 2020. (JA 42). Appellant's unit initially handled this misconduct with a battalion commander level letter of reprimand (JA 70).

Over the next year, Appellant's behavior continued to deteriorate. On July 22, 2021, Appellant became disrespectful during a discussion with his first sergeant. (JA 44). On July 19th, the acting first sergeant, 1SG SJ, directed appellant to come to his office at 1600 that day. (JA 44). However, Appellant failed to show and instead approached 1SG SJ several days later at physical training. (JA 44).

He came up to the first sergeant, "voice elevated" and he was "really mad" that 1SG SJ moved a Soldier from Appellant's section. (JA 44). Appellant behaved this way in front of the "entire company." (JA 45). First Sergeant SJ removed the

[1] Throughout the court-martial, there was conflicting testimony about the nature and severity of her illness.

Soldiers from the area before engaging with Appellant, but even then, Appellant continued disagreeing with his senior noncommissioned officer, raising his voice and demonstrating anger. (JA 45).

Appellant's misconduct continued. On July 22, 2021, Appellant's executive officer, 1LT SD, approached Appellant during physical training because Appellant and his team were running when they were supposed to be playing football. (JA 49). 1LT SD told Appellant, "Hey, you can't do this. You can't have people not participating while everyone else is participating" and asked him to stop running and "go play football with everyone." (JA 50). Appellant responded to 1LT SD that he did not have the authority to give him commands that way, or words to that affect. (JA 50). 1LT SD felt that the response was "degrading and disrespectful." (JA 50–51).

Several days following the incident with his company executive officer, Appellant disobeyed a direct order from his company commander, CPT JO. (JA 67). Appellant and his team were on Temporary Duty (TDY) in late July 2021. The commander expected the group to return on or about July 28, 2021. (JA 54). This was a cost saving measure as the team had no missions until August 1, 2021. (JA 54). While CPT JO could not recall his exact communications with Appellant, on July 29, he sent an email to Appellant, copying his detachment sergeant and first sergeant, which gave a direct order for Appellant to return. (JA 58; JA 67).

Appellant responded to the email— adding the battalion XO, battalion commander, brigade sergeant major, and brigade commander— stating that he would not comply with the order. (JA 60, 67). Eventually, with the intervention from the command sergeant major, Appellant returned, but not before willfully disobeying the order from CPT JO. (JA 61).

Finally, in November of 2021, Appellant engaged in an altercation with his wife that became physical when he knocked her to the ground and kicked her in her injured ankle. (JA 62–66).

**B. Post-Trial Delay.**

The trial concluded on May 20, 2022. (JA 15). The Staff Judge Advocate prepared her clemency advice on June 6, 2022, and the convening authority signed his action the same day. (JA 12). The military judge signed the Judgment of the Court on December 22, 2022. (JA 11). Almost two years later, on December 6, 2024, the Office of the Staff Judge Advocate [OSJA] forwarded the record of trial to the Army Court, accompanied with a letter of lateness from the Deputy Staff Judge Advocate. (JA 20). This letter described a series of personnel shortages and an increase in the number of court-martials as reasons for the delay in Appellant's case. (JA 20). To help mitigate these delays, the Fort Irwin OSJA had executed a contract with a transcription service to assist with their backlog of cases. (JA 20).

**Granted Issue 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.**

## Standard of Review

The scope, applicability, and meaning of Article 66(d), UCMJ, is a matter of statutory interpretation that this court reviews *de novo*. *United States v. Valentin-Andino*, 85 M.J. 361, 364 (C.A.A.F. 2025) (citing *United States v. McAlhaney*, 83 M.J. 164, 166 (C.A.AF. 2016)).

## Law and Argument

### A. Historical Treatment of Post-Trial Delay.

Prior to the implementation of the Military Justice Act of 2016 (MJA 2016) in January of 2019, a CCA's ability to grant sentence relief for excessive post-trial delay stemmed from Article 66(c), and their authority to "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." 10 U.S.C. § 866; *see also United States v. Valentin-Andino*, 85 M.J. 361, 364 (C.A.A.F. 2025). Previously, this Court grounded a CCA's ability to provide relief under Article 66 for post-trial delay in its broad sentence appropriateness review authority. *See United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002). This Court has

described this sentence appropriateness review authority as an "awesome, plenary, *de novo* power of review." *United States v. Cole*, 31 M.J. 270, 272 (C.A.A.F. 2024).

The MJA 2016 moved the previous language found in Article 66(c) to Article 66(d)(1) and added the new language found in Article 66(d)(2). *Compare* 10 U.S.C. § 866(d)(2) (2019), *with* 10 U.S.C. § 866(c) (2012). The relevant text in the new Article 66(d)(2) reads "[i]n any case before [a CCA] . . . the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record . . ." *Id*. Although the statute has changed, the Army Court continues to view their role under Article 66(d)(2) to be grounded in their broad sentence appropriateness review authority. [2] *United States v. Abdullah*, 85 M.J. 501, n. 5 (Army Ct. Crim. App. 2024) (*en banc*), *cert. granted*, 85 M.J. 319 (citing *United States v. Brown*, 81 M.J. 507, 511 n. 2 (Army Ct. Crim. App. 2021)). [3] Similarly, the other CCAs continue to cite to *Tardif* under the amended statute in recognition

[2] "For decades, this Court and the CCAs have exercised jurisdiction over allegations of post-trial delay and illegal post-trial punishment." *United States v. Lopez*, 86 M.J. 139, 151 (C.A.A.F. 2025) (Johnson, J., dissenting). The addition of language in Article 66(d)(2) acts to codify this year's long practice by the Courts of Appeal. *Id*.

[3] Although this case is published, Lexis has not updated the opinion with pin cites to the Military Justice Reporter, therefore the Government refers to the pin cites using the Lexis formatting.

that their review remains embedded with their broad "sentence appropriateness" review that has long been recognized by this Court.[4]

**B. Article 66(d)(2).**

Inherent in the plain language of Article 66(d)(2), UCMJ, is the following proposition: (1) If the CCA finds excessive delay, (2) then the court may grant appropriate relief. Under this statute, the CCA must evaluate each predicate question. Both of which require their own standard of review.

**1. Whether appellant has demonstrated excessive delay.**

The standard of review for a CCA's determination of whether appellant has demonstrated excessive delay is the first point in which Appellant and the government disagree. Appellant advocates this first condition be evaluated *de novo*, claiming it to be a "legal question." (Appellant Br. 8–9). However, it is more appropriate that the finding of whether appellant has demonstrated excessive delay is a question of fact for a CCA to determine. Thus, this Court should evaluate their determination for abuse of discretion due to its highly contextual dependance.[5]

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[4] *United States v. Gray*, No. ACM 40648, 2025 CCA LEXIS 122, *17 (A.F. Ct. Crim. App. Mar. 24, 2025); *United States v. Nenni*, Dkt. No. 1494, 2024 CCA LEXIS 417, *6 (C.G. Ct. Crim. App. Oct. 10, 2024); *United States v. Raines*, No. 20240004, 2024 CCA LEXIS 410, *4 n. 9 (N-M Ct. Crim. App. Oct. 3, 2024).

[5] While not posed in this specific case, the Government acknowledges that the separate portion of Article 66(d)(2) of whether there is "error" is a finding this Court reviews *de novo*, as it is a finding of law. It appears this is also the stance

A CCA conducts a case-by-case analysis to determine if a given delay is facially unreasonable. *Toohey v. United States*, 60 M.J. 100, 102 (C.A.A.F. 2004). The Army Court has "in considering whether a delay is excessive broadly focuses on the totality of the circumstances surrounding the post-trial processing timeline for each case, "balancing the factors such as chronology, complexity, and unavailability, as well as the unit's memorialized justifications for the delay." *United States v. Winfield*, 83 M.J. 662, 666 (Army Ct. Crim. App. 2023).

Currently, there is no set number of days that create a *per se* finding of excessive post-trial delay. "[S]ome cases justifiably take longer than 150 days to process for appellate review. Others should take significantly less time." *United States v. Winfield*, 83 M.J. 662, 665 (Army Ct. Crim. App. 2023). Whether a post-trial processing timeline is reasonable or dilatory is determined on a case-by-case basis. See *Abdullah*, 2024 CCA Lexis 449, *10–*11 (Army Ct. Crim. App. Nov. 5, 2024).

Whether excessive delay exists in any specific case is fact dependent and many factors can inform the ultimate question of whether the delay was excessive. As such, this Court should review for an abuse of discretion.

**2. The service court's decision whether to grant relief.**

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this Court has already adopted. *See United States v. Williams*, 85 M.J. 121, 126–27 (C.A.A.F. 2024).

Turning to the second part of this bifurcated standard of review, Appellant's and the Government's positions are more closely aligned. The Government agrees with the defense position that the exercise of the CCA's discretionary review pursuant to Article 66, UCMJ warrants review pursuant to the abuse of discretion standard. The plain reading of the statute leaves "the determination as to whether relief is provided, and what type of relief is appropriate" to a CCA's discretion.

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. As such, this Court's review "is limited to the narrow question of whether there has been an obvious miscarriage of justice or an abuse of discretion." *United States v. Swisher*, 85 M.J. 1, 4 (C.A.A.F. 2024). While Congress modified the previous version of Article 66(c), they intentionally provided this power of review only to the CCAs.[6] Due to the intentional decision not to extend the same authority to this Court, heightened deference should remain for a CCA's decisions in this realm. Additionally, the Army Court appears to continue to interpret Article 66(d)(2) under their broad sentence appropriateness review authority. *United States v. Brown*, 81 M.J. 507, 511 n. 2 (Army Ct. Crim. App. 2021).

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[6] "Sentence appropriateness review is a power exclusive to the CCAs and this Court should not intervene unless absolutely necessary." *United States v. Swisher*, 85 M.J. 1, 7–8 (C.A.A.F. 2024).

## Granted Issue 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.**

## Standard of Review

This Court reviews a decision from a CCA to grant or deny relief for excessive post-trial delay using its power under Article 66(d)(2), UCMJ for an abuse of discretion, and is limited to the narrow question of whether there has been an obvious miscarriage of justice or an abuse of discretion.[7] *United States v. Swisher*, 85 M.J. 1, 4 (C.A.A.F. 2024). Service courts abuse their discretion when they act arbitrarily, capriciously, or unreasonably as a matter of law. *United States v. Flores*, 84 M.J. 277, 282 (C.A.A.F. 2024).

Claims challenging the due process right to a speedy post-trial review and appeal are reviewed *de novo*. *United States v. Anderson*, 82 M.J. 82, 85 (C.A.A.F. 2022) (citing *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006)).

## Law and Argument

There are two separate, and distinct, responsibilities for a military court of review in addressing appellate delays. *See Toohey v. United States*, 60 M.J. 100,

[7] The Government recognizes this is an unsettled area of law and instead cites to the case law we believe to be most on point for this Court to utilize in conducting its review.

103–04 (C.A.A.F. 2004). First, determining whether appellant suffered a due process violation under the Constitution. *United States v. Simon*, 64 M.J. 205, 207 (C.A.A.F. 2006). Second, determining sentence appropriateness under Article 66(d)(2), UCMJ. *See United States v. Simon*, 64 M.J. 205, 207 (C.A.A.F. 2006).

**A. Article 66 Sentence Appropriateness.**

Historically, a CCA considers whether relief for excessive post-trial delay is warranted based on the CCA's sentence appropriateness authority under Article 66(d)(1), UCMJ. *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002). This awesome and plenary sentence review authority is highly discretionary. *United States v. Armsbury*, __ M.J. __, 2026 CAAF LEXIS 274, *12 (C.A.A.F. Mar. 24, 2026). "Article 66(d)(2) leaves the determination as to whether relief is provided, and what type of relief is appropriate, to [a CCA's] discretion." *Abdullah*, 2024 CCA Lexis 449, *10–*11 (Army Ct. Crim. App. 5 Nov. 2024). It is also appropriate for a CCA to find there is excessive delay, but that the appropriate relief is that no relief should be afforded. *See Winfield*, 83 M.J. at 666 (Army Ct. Crim. App. 2023).

Appellant highlights throughout their brief the Army Court's failure to put their reasoning on the record, and in so doing, asserts this constituted an abuse of discretion. It is true that a court that fails to explain itself may be afforded less deference. *United States v. Ramirez*, 84 M.J. 173, 176 (C.A.A.F. 2024). However,

this Court has also held, in the context of denying meaningful relief for post-trial delay "neither Article 66(d)(2)'s plain language nor any other provision in the *Manual for Courts-Martial* imposes such a requirement, and we will not create such a rule out of thin air." *United States v. Valentin-Andino*, 85 M.J. 361, 367 (C.A.A.F. 2025). Although "it is within a Court of Criminal Appeal's discretion to place its reasoning about Article 66(d)(2) relief on the record it is not required to do so." *Id*.

In performing its two-part analysis required under Article 66(d)(2), it can be assumed the Army Court found excessive delay existed in the present case. Not only did the record fairly reflect this fact, but the Government conceded this to be true from the beginning. 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. Thus, this Court's analysis should be focused solely on the second prong of whether the Army Court abused its discretion in denying Appellant relief.

There are two factors that guide this Court's decision in conducting this analysis. First, there is no requirement that a CCA place their reasoning to grant or deny relief on the record. *Valentin-Andino*, 85 M.J. at 367. The Army Court's decision not to expound further on their reasoning alone does not constitute an abuse of discretion.

Second, a CCA's exercise of their sentence appropriateness review is highly discretionary. There are many pertinent considerations for a CCA on the question of sentence appropriateness, but the individual weighing of these factors do not demonstrate that the decision of the CCA constituted an abuse of discretion. *United States v. Armsbury*, __ M.J. __, 2026 CAAF LEXIS 274, *12 (C.A.A.F. Mar. 24, 2026) (citing *United States v. Sothen*, 54 M.J. 294, 297 (C.A.A.F. 2001)).

In coming to their conclusion, the Army Court would have weighed the post-trial delay suffered with the totality of the entire appellate record. This includes comparing the relatively light sentence received to Appellant's convictions.[8] Thus the Army Court's decision, notwithstanding the Government's position, is not unreasonable and does not constitute an abuse of discretion.

**B. Due Process.**

Separate and distinct from a CCA's Article 66, UCMJ review authority is the analysis for a potential violation of the Due Process Clause of the Fifth Amendment. To determine whether the delay in an appeal violated an appellant's due process rights to a speedy post-trial review, this Court weighs these four factors: (1) length of the delay; (2) reasons for the delay; (3) the appellant's

[8] Appellant received a reduction from E-6 to E-5, and thirty days hard labor for the offenses of absence without leave, disrespect to a superior non-commissioned officer, disrespect to a superior commissioned offer, willfully disobeying a superior commissioned officer, and battery upon a spouse.

assertion of his right to a timely appeal; and (4) prejudice to the appellant." *United States v. Moreno,* 63 M.J. 129, 145 (C.A.A.F. 2006) (citing *Barker v. Wingo,* 407 U.S. 514 (1972)). "No single factor is dispositive, and absence of a given factor does not prevent finding a due process violation . . . ." *United States v. Anderson*, 82 M.J. 82, 86 (C.A.A.F. 2022). The *Barker* analysis is not required if this Court determines that any due process violation is harmless beyond a reasonable doubt. *United States v. Finch*, 64 M.J. 118, 125 (C.A.A.F. 2006).

In determining whether a due process error was harmless beyond a reasonable doubt, the court analyzes the case for prejudice. *United States v. Ashby*, 68 M.J. 108, 125 (C.A.A.F. 2009). This analysis is "separate and distinct from the consideration of prejudice as one of the four *Barker* factors." *Id*. Under this review, the court considers "the totality of the circumstances" based on the "entire record." *Id*. The court "will not presume prejudice from the length of the delay alone," but instead requires evidence of prejudice in the record." *Id*.

If no prejudice is found under the fourth factor, "a due process violation only occurs when, 'in balancing the three other factors, the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system.'" *United States v. Anderson,* 82 M.J. 82 at 87–88 (C.A.A.F. 2022) (additional citations omitted).

Appellant's brief to this Court no longer alleges a due process violation. As

such, it can be assumed Appellant has abandoned this argument. Because of this abandonment, this Court can find any prejudice from the excessive delay to be harmless beyond a reasonable doubt and Appellant to not be entitled to relief.

Further, the Government's position is there is no due process violation. While the first and second *Barker* factors clearly weigh in favor of Appellant, Appellant never requested speedy post-trial and is unable to show any prejudice. Appellant does not assert, nor does evidence exist, that the processing of this record impaired Appellant's grounds for appeal or affected his defense at a possible rehearing. *See Moreno*, 63 M.J. at 139–40.

Lastly, while the delay may be excessive, Appellant does not provide a reason why the delay is so egregious as to adversely affect the public's perception of the military justice system. This Court has previously rejected claims of due process violations with delays longer than this, and this Court can determine any prejudice is harmless beyond a reasonable doubt. *See United States v. Bush*, 68 M.J. 96, 104 (C.A.A.F. 2009).

## Conclusion

WHEREFORE, the government respectfully requests This Honorable Court affirm the findings and sentence.

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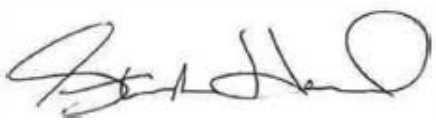

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## CERTIFICATE OF COMPLIANCE WITH RULE 24(b) and 37

1. This brief complies with the type-volume limitation of Rule 24(b)(1) because this brief contains **3,799** words.

2. This brief complies with the typeface and type style requirements of Rule 37. It has been typewritten in 14-point font with proportional, Times New Roman typeface, with one-inch margins.

Andrew Bobowski

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**CERTIFICATE OF SERVICE**

**UNITED STATES v. DANIEL J. VALDEZ, USCA Dkt. No. 26-0122/AR**

I certify that a copy of the foregoing was sent via electronic submission to the Defense Appellate Division at ***usarmy.pentagon.hqda-otjag.mbx.usalsa-dadservice@army.mil*** on the 6th day of May, 2026

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