

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

**UNITED STATES,**  
Petitioner

**REAL PARTY IN INTEREST'S  
MOTION TO DISMISS**

v.

Docket No. ARMY MISC 20250182

Lieutenant Colonel (O-5)  
**JONES, PAMELA L.,**  
Military Judge,  
Respondent

and

Sergeant First Class (E-7)  
**STARR, BRYAN D.,**  
U.S. Army,  
Real Party in Interest

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Sergeant First Class Bryan D. Starr, the real party in interest, by and through appellate defense counsel, moves this court to dismiss the petition for extraordinary relief.

**Statement of Facts**

On 7 March 2025, petitioner filed a writ petition with this court signed by the Office of Special Trial Counsel (OSTC). The Government Appellate Division (GAD) signed the other filings related to the petition.

This court ordered the parties to brief the question of whether the OSTC had the authority to file on behalf of and represent the United States before this court

on a writ petition. Before this court could answer its question, the GAD filed a motion to withdraw the petition and replace it with a corrected copy. The corrected copy reflected corrections made by the GAD.

On 9 April 2025, this court ruled en banc that the 7 March petition did not comport with Article 70, UCMJ, which requires that appellate government counsel represent the United States in front of this court. Subsequently, this court dismissed the petition.

Within hours of the court's 9 April order, petitioner filed the current petition signed by the GAD. It is largely a cut-and-paste job of the original 7 March petition signed by the OSTC. Simultaneously, petitioner filed a motion requesting this court suspend J.R.A.P. R. 19(b)(1)'s 20-day filing deadline, also signed by the GAD. Petitioner explained "it did not interpret UCMJ art. 70 to preclude such a filing." Petitioner argued its current petition "remedied the issue" and requested this court consider the petition on its merits.

### **Law and Argument**

An attorney's erroneous belief does not always provide the "requisite good cause" for a court to suspend filing deadlines. *United States v. Denedo*, 69 M.J. 262 (C.A.A.F. 2010). In *Denedo*, the Court of Appeals for the Armed Forces declined to suspend the filing deadline for an out-of-time writ-appeal petition when

appellate defense counsel “erroneously believed” the filing deadline was 60 days, instead of the actual 20 days required by the CAAF’s rules.

Similarly, petitioner is requesting this court suspend the rules because of its mistaken belief that the OSTC had the authority to file the first petition. However, like in *Denedo*, this court should not suspend J.R.A.P. R. 19(b)(1)’s 20-day filing deadline under the circumstances presented here. Doing so would allow petitioner a third chance to file its petition, which is untimely due to its own error.

### **Conclusion**

Sergeant First Class Starr respectfully requests this court dismiss the petition.


Panel 4

MOTION TO DISMISS


GRANTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

DATE: \_\_\_\_\_



Emily R. Ittner  
Captain, Judge Advocate  
Appellate Defense Counsel  
Defense Appellate Division



Robert W. Rodriguez  
Major, Judge Advocate  
Branch Chief  
Defense Appellate Division

### **Certificate of Filing and Service**

I certify that a copy of the foregoing was electronically submitted to the  
Army Court and Government Appellate Division on 21 April 2025.



Robert W. Rodrigue  
Major, Judge Advocate  
Branch Chief  
Defense Appellate Division