

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Private First Class (E-3)
JEROME J. FORREST,
United States Army

Appellant

**REFILE: MOTION FOR
RECONSIDERATION AND
MOTION FOR EXTENSION (5)**

Docket No. ARMY 20200715

Tried at Fort Campbell, Kentucky, on
8 May 2019, 6 August 2019, 29
August 2019, 25 October 2019, 2
December 2019, 19 February 2020, 7
December 2020, 9-11 December
2020, and 14-16 December 2020
before a general court-martial
convened by the Commander,
Headquarters, Fort Campbell, Colonel
Matthew A. Calarco and Colonel
Jacqueline Tubbs, military judges,
presiding.

COME NOW the undersigned appellate defense counsel, pursuant to Rules 23
and 24 of this court's Rules of Appellate Procedure, and move for a 30-day
extension of time until 14 January 2022 to file a Brief on Behalf of Appellant.

1. On 16 December 2020, a military judge sitting as a general court-martial convicted appellant, contrary to his plea, of one specification of violating Article 118, intentional murder. 10 U.S.C. § 918 (2018). The military judge sentenced appellant to a dishonorable discharge and confinement for life with eligibility for parole. Appellant is still in confinement and concurs with this request.

2. On 19 April 2021, this court received appellant's record of trial which includes 1,273 pages of transcript and an additional 1,509 pages of exhibits and allied documents (plus multiple discs).

3. This court granted Appellant's Motion for Extension (4), but indicated that it would be the final extension granted. Appellant requests reconsideration based on the following:

a. As a result of investigation into the facts and circumstances in this case, a review of the record of trial, and a review of additional files provided by appellant and his trial defense counsel up to this point, appellate defense counsel has found it necessary to consult with outside psychiatric/psychological experts and conduct extensive additional investigation and research into complex areas in which counsel have limited experience and understanding. Appellate counsel have also been conducting additional fact investigation which has been made more difficult because of the lack of contact information for many of the witnesses.

b. Following appellant's conviction for murder, the entirety of the defense's pre-sentencing case covers less than thirty pages of transcript and consisted of only four family member-witnesses, all of whom provided perfunctory testimony. (R. at 1229-1257). Conversations with these witnesses revealed trial defense counsel did little to prepare them to testify, and the family as a whole had limited interaction with trial defense counsel. To meet our professional obligations, appellate defense counsel must investigate the adequacy of trial representation with respect to pre-trial investigation and witness preparation, including the preparation of the appellant's pre-sentencing case. That investigation is ongoing.

c. At trial, the military judge denied a request for a defense expert consultant in the area of mitigation and extenuation. Appellate defense counsel are investigating whether additional diligence and investigation on the part of trial defense counsel may have established a stronger basis for the motion, especially in light of information uncovered during appellate counsel's investigation.

d. Due to the coronavirus pandemic and staffing shortages at the United States Disciplinary Barracks, appellate counsel have had extensive difficulties coordinating opportunities to speak with appellant at the Disciplinary Barracks; on occasion, it has taken over two weeks to schedule a phone call. Additionally, due to the slow

pace at which mail is being processed, it can take extended periods of time to transmit necessary documents to appellant for his signature.

e. Appellate defense counsel are still waiting on additional files to be provided by the trial defense counsel which may create additional grounds for investigation.

f. The errors which appellate defense counsel intend to assign involve factually and legally complex issues related to both the merits and pre-sentencing portions of the trial, which required extensive investigation and research beyond that required by the typical case.

g. Within the next 30 days, first undersigned counsel has five cases with briefs due to this court, three of which are contested cases. First undersigned counsel also has four cases due to the Court of Appeals for the Armed Forces by the end of December.

h. In total, first undersigned counsel has eleven cases pending a brief before this court (including four contested cases) and four before the Court of Appeals for the Armed Forces. First undersigned counsel also has seven cases submitted to this court pending government response or decision and three before the Court of Appeals for the Armed Forces. In the past two months, first undersigned counsel also had three oral arguments, two before this court and one before the Court of Appeals for the Armed Forces.

i. Appellant stands convicted of murder and has been sentenced to life in prison. Consistent with Army Regulation 27-26, Rules of Professional Conduct for Lawyers, and state bar rules of professional responsibility the undersigned counsel request additional time to ensure that counsel has diligently investigated, thoroughly researched, and appropriately briefed the assignments of error in this case in order to fulfill counsels' ethical obligation to represent the appellant's interest.

4. Undersigned counsel request an extension be granted until 14 January 2022 to ensure that the above issues can be resolved and all of the relevant investigation can be completed.

5. Appellate counsel believe that no additional requests for extension will be necessary after this extension.

WHEREFORE, appellate defense counsel respectfully request that this court grant the instant motion.

PANEL NO. 4

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GRANTED:  **FINAL**

DENIED: _____

DATE: 6 DEC 2021




NANDOR F.R. ~~KISS~~
CPT, JA
Appellate Defense Counsel
Defense Appellate Division



RACHEL P. GORDIENKO
MAJ, JA
Branch Chief
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on December 2, 2021.


MELINDA J. JOHNSON
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