

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

**MOTION FOR LEAVE TO FILE
MOTION TO RETURN RECORD TO
MILITARY JUDGE TO BE
COMPLETED AND STAY THE
DEADLINE TO FILE A BRIEF ON
BEHALF OF APPELLANT**

Appellee

Docket No. ARMY 20220233

v.

SGT (E-5)
CHAS E. PHILLIPS
United States Army,
Appellant

Tried at Fort Bliss, Texas, on 1 November 2021, 6 December 2021, 24 January 2022, and 5–6 May 2022, before a general court-martial appointed by Commander, 1st Armored Division, Colonel Robert L. Shuck and Colonel Matthew S. Fitzgerald, presiding.

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

COME NOW the undersigned appellate defense counsel, pursuant to Rule 23 of this court's Rules of Appellate Procedure, and move this court for leave to file a motion to return the record and stay the deadline to file a Brief on Behalf of Appellant. Appellant requests this court set a new filing deadline thirty (30) days after appellate defense counsel receive notification that the missing records of the court-martial proceedings have been attached to the record by this court. The brief is currently due to this court on 6 May 2023.

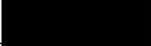
On 29 November 2021, the appellant’s defense counsel filed a motion to preclude the admission of evidence under Military Rule of Evidence (M.R.E.) 404(b). (App. Ex. XVII). On 3 December 2021, the government responded. (App. Ex. XVIII). On 6 December 2021, the military judge held an Article 39(a) hearing to argue the motion, but did not rule on it. (R. at 77–81). On 24 January 2022, the military judge recused himself. (R. at 98). On 5 May 2022, the new military judge reviewed outstanding motions. (R. at 111–17). The government entered evidence relevant to the M.R.E. 404(b) motion at trial. (R. at 201, 252, 296, 337).

Article 54 of the Uniform Code of Military Justice (UCMJ) (10 U.S.C. § 854) states each general court-martial “shall keep a separate record of the proceedings in each case brought before it.” A military judge must have made a ruling regarding the admissibility of the government’s proposed evidence under M.R.E. 404(b) prior to its admission at trial; that ruling is not included in the instant record of trial. If a record is incomplete, “a superior competent authority may return a record of trial to the military judge for correction.” R.C.M. 1112(d). Because this record is incomplete, it should be returned to the military judge to be completed.

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

PANEL NO. 2

MOTION FOR LEAVE TO FILE

GRANTED:  _____

DENIED: _____

DATE: 18 April 2023

MOTION TO RETURN RECORD TO
MILITARY JUDGE TO BE
COMPLETED:

GRANTED: _____

DENIED:  _____

DATE: 18 April 2023

MOTION TO STAY DEADLINE
TO FILE A BRIEF ON BEHALF
OF APPELLANT

GRANTED: _____

DENIED:  _____

DATE: 18 April 2023



KEVIN T. TODOROW
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division



RACHEL P. GORDIENKO
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 Army Court and Government Appellate Division on April 13, 2023.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division