

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee

**MOTION TO ATTACH GOV'T
APPELLATE EXHIBIT 1**

v.

Docket No. ARMY 20210662

Sergeant (E-5)
RYAN C. THOMAS,
United States Army,
Appellant

Tried at Fort Stewart, Georgia, on 30 April, 30 June, 31 August, 1 September, and 13–17 December 2021, before a general court-martial convened by the Commander, Third Infantry Division, Colonel G. Bret Batdorff and Colonel Alyssa Adams, Military Judges, presiding.

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

COMES NOW, the undersigned appellate government counsel, pursuant to Rule 23.3 of this honorable court's Rules of Appellate Procedure, and moves to attach Government Appellate Exhibit 1 to the Record of Trial (ROT).

On 27 April 2023, this court issued its opinion in *United States v. Winfield*, 83 M.J. 662 (Army Ct. Crim. App. 2023). In abandoning the bright-line presumption of unreasonable post-trial delay in any case exceeding 150 days from adjournment to appellate docketing, see *United States v. Brown*, 81 M.J. 507, 510 (Army Ct. Crim. App. 2021), this court announced it “will scrutinize even more closely the unit-level explanations for post-trial processing delays. . . .” *Winfield*, 83 M.J. at 665.

On 3 August 2023 appellant filed his brief with this court alleging unreasonable post-trial delay, challenging the Fort Stewart Office of the Staff Judge Advocate's (OSJA's) post-trial processing time and lack of explanation. (Appellant's Br. 25, 27).

On 27 November 2023, the Fort Stewart Chief of Military Justice (CoJ) submitted to appellate government counsel a memorandum for record documenting the OSJA's court reporter unavailability and turnover, backlog of previously completed courts-martial, and efforts to either contract or coordinate outside the OSJA to alleviate the bottleneck. Memorandum from [REDACTED] - [REDACTED], Subject: Documentation for Post-Trial Delay, U.S. v. Thomas (27 Nov. 2023). Appellee now moves to attach that memorandum to appellant's ROT.

WHEREFORE, the United States prays this honorable court grant the instant motion to attach Government Appellate Exhibit 1.

MOTION TO ATTACH GOV'T
APPELLATE EXHIBIT 1

Panel No. 3

[REDACTED]
ALEX J. BERKUN
CPT, JA
Appellate Attorney, Government
Appellate Division

GRANTED: _____

DENIED: _____

DATE: _____

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was sent via electronic submission to the
Defense Appellate Division at [REDACTED]
[REDACTED] on this 1st day of December 2023.

[REDACTED]
Paralegal Specialist
Government Appellate Division

EXHIBIT 1



DEPARTMENT OF THE ARMY
HEADQUARTERS, 3D INFANTRY DIVISION AND FORT STEWART
942 BEN HALL PL BLDG HQ001
FORT STEWART, GEORGIA 31314

AFZP-JAC

27 November 2023

MEMORANDUM FOR Record

SUBJECT: Documentation for Post-Trial Delay, U.S. v. Thomas

1. The case of United States v. SGT Ryan Thomas was completed on 17 December 2021 at Fort Stewart, Georgia. This memorandum captures the post-trial processing of the case in the days elapsed between announcement of the sentence and forwarding to ACCA.

2. Court Reporter Shortages and Docketing Issues

a. Between the conclusion of this case and completion of the transcript, Fort Stewart completed 28 courts martial, including 12 other contested cases. Fort Stewart also had a backlog of post-trial consisting of 14 cases in various dispositions that required full post-trial processing.

b. At the time of trial, our post-trial team consisted of one civilian clerk of court and one military court reporter. This team handled all post-trial processing (including transcription, assembly, scanning, redaction, transmission to eROT, preparation of ACMPRS files, and coordinating with the Judge and the parties to complete the record), as personnel shortages limited the OSJA's ability to assign a full-time post-trial NCO.

c. Since trial, the court reporter who sat the trial, SSG FJ, PCS'd without completing the transcript. Since then, we have learned that SSG FJ's court reporter ASI has been revoked due to inefficiency and he is no longer authorized to perform court reporter duties.

d. Fort Stewart did receive additional court reporters after SSG FJ departed. SSG TH arrived in May 2022 from court reporter school and immediately started working on backlogged cases and pending trials. However, SSG TH was almost immediately limited in their ability to serve as a court reporter due to various issues. SSG TH was not proficient in transcribing and was often absent from work.¹ SSG TH exited the Army in May 2023.

¹ To preserve SSG TH's privacy, and consistent with the admonishment of the U.S. Army Court of Criminal Appeals' memorandum opinion in *United States v. Baylor*, further details about the reasons for SSG TH's absences are omitted and will not be provided absent an order of a court with jurisdiction over this case.

AFZP-JAC

SUBJECT: Documentation for Post-Trial Delay, U.S. v. Thomas

e. In August 2022, SGT ML arrived from court reporting school and was placed in an on boarding and training program by the clerk of court. SGT ML was immediately limited in their ability to perform court reporter duties due to various issues. SGT ML was removed from court reporting duties based on the advice of various professionals in November 2022, and exited the Army in March 2023.²

f. Our remaining court reporters, SFC JB and Mrs. VG, were responsible for all courts martial and post-trial until SPC CJ was certified as a new court reporter in January 2023.

g. SFC JB is our senior court reporter. However, as part of normal career progression for personnel of her grade, she had been serving NCOIC roles in brigades for the past several years and not performing court reporter duties. Upon her arrival at Fort Stewart, she had to familiarize herself with the Eclipse court reporting system and re-train her court reporting skills. This understandable period of familiarization with a new system, compounded with all the extensive additional duties of a senior court reporter, resulted limits to her ability to transcribe. This affected Fort Stewart's ability to complete transcripts.

h. SPC CJ had just graduated court reporter school upon his arrival. He is a capable court reporter who is technologically savvy and was able to quickly learn his new position. He is still new. His transcription speed and accuracy has improved tremendously, but he was still learning on the job for several months. This also affected Fort Stewart's ability to complete transcripts.

3. Attempts at Outsourcing.

a. Fort Stewart attempted to contract transcription services in October 2022. Our efforts were unsuccessful. Due to the scope of the work and the projected cost, a sole-source contract was unacceptable to the Contracting Office. A request for bids only returned one bidding contraction. No other contractor was willing to transcribe cases from the Eclipse software.

b. Fort Stewart additionally attempted to utilize the JAG Corps court reporter regionalization initiative. This effort failed. 20 hours of untranscribed audio were provided to the region for transcription. 16 hours were returned untranscribed, 4 hours were so poorly transcribed that the clerk of court determined we should start over.

c. Efforts to reach out to other units directly for assistance were unsuccessful. For example, we were advised by higher headquarters to reach out to V Corps for

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SUBJECT: Documentation for Post-Trial Delay, U.S. v. Thomas

assistance, as they had three court reporters available. Upon reaching out, we found out that none of their paralegals were performing court reporter duties.

4. Way ahead.

a. Fort Stewart now again counts with three military court reporters and a civilian clerk of court. New arrivals have resolved some manning issues, and we now have a dedicated post-trial NCO to alleviate some of the court reporters' post-trial assembly and redaction burden.

b. Thanks to assistance from OTJAG Criminal Law and approval of funding from the Commanding General, Fort Stewart is outsourcing hours of untranscribed audio to the Flexible Litigation Augmentation Support (FLASH) for HQDA through the USALSA eDiscovery Division. This will allow Fort Stewart to completely clear our transcription backlog and allow our court reporters for focus on staying current with their transcription and post-trial responsibilities.

6. I am the point of contact for this memorandum.


MAJ, JA
Chief, Military Justice