

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee

MOTION FOR EXTENSION (2)

v.

Docket No. ARMY 20230029

Sergeant (E-5)
MICHAEL V. SMITH,
United States Army,
Appellant

Tried at Fort Huachuca, Arizona, on 30 March, 25 May 2022, and 17-20 January 2023, before a general court-martial appointed by the Commander, Headquarters, U.S. Army Intelligence Center of Excellence & Fort Huachuca, Lieutenant Colonel Michael E. Korte, Military Judge, presiding.

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

COME NOW the undersigned appellate defense counsel, pursuant to Rules 23 and 24 of this Court's Internal Rules of Practice and Procedure and move this court to grant appellant's Motion for Extension of Time. The undersigned appellate defense counsel requests a 30-day extension of time, until 5 November 2023, to file a Brief on Behalf of Appellant. The Brief on Behalf of Appellant is currently due on 6 October 2023. Pursuant to Rule 24.1(b) and Rule 31, the first undersigned counsel asserts:

1. On 20 January 2023, a military judge sitting as a general court-martial, found Sergeant Smith (Appellant) guilty contrary to his pleas of one specification of sexual assault, one specification of sexual abuse, one specification of extramarital sexual conduct, and one specification of assault consummated by battery in violation of

Articles 120, 128, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920, 928, and 934 [UCMJ]. The military judge sentenced appellant to forty months and fifteen days of confinement, reduction to E-1, and dishonorable discharge. He was found not guilty of one specification of sexual assault in violation of Article 120. Two specifications of sexual assault in violation of Article 120 were withdrawn and dismissed. On 31 March 2023, the convening authority took no action. This court referred appellant's case on 9 May 2023.

2. The trial transcript contains 685 pages and the record of trial with attachments consists of 1,887 pages, excluding the sealed materials.
3. First undersigned counsel currently has twenty-four cases pending before this Court and eight cases pending before the Court of Appeals for the Armed Forces (CAAF). In addition, she was on leave through 15-30 September.
4. Appellant is currently confined at JRCF. Pursuant to *United States v. Grostefon*, 12 M.J. 431, 436 (C.M.A. 1982), Appellant wishes to review and possibly submit his own issues to the court.
5. Appellant requests additional time to receive and review his Record of Trial. As the *Grostefon* court noted, “even the most conscientious counsel and judges will occasionally overlook an error in the press of dealing with a load of case, and, for that reason, any assistance in the identification of issues can further the proper administration of military justice.” *Id.* Furthermore, the court held, “we will *require* that when the accused specified error in his request for appellate representation or in some other form, the appellate defense counsel will, at a minimum, invite the attention of the Court of Military Review to those issue and, in its decision, the Court of Military Review will, at a minimum, acknowledge that it has considered those issues enumerated by the accused and its disposition of them.” *Id.* (emphases added).
6. Undersigned counsel respectfully requests the court to grant the Motion for Extension so she can fulfill counsel's ethical obligation to represent Appellant's interests.

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

PANEL NO. 3

MOTION FOR EXTENSION (2)

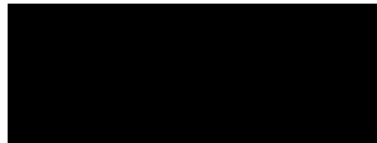
GRANTED:  _____

DENIED: _____

DATE: 05 October 2023 _____



TUMENTUGS D. ARMSTRONG
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division



MITCHELL HERNIAK
MAJ, JA
Branch Chief
Defense Appellate Division

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was electronically submitted to
the Army Court and Government Appellate Division on 2 October 2023.



TUMENTUGS D. ARMSTRONG
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division