

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION FOR EXTENSION (5)
OUT OF TIME**

v.

Docket No. ARMY 20230168

Private First Class (E-3)
DONTE M. BROWN
United States Army

Appellant

Tried at Fort Riley, Kansas, on 3 October 2022, 14 February 2023, and 28-31 March 2023, before a general court-martial appointed by the Commander, Headquarters, Fort Riley, Colonel Steven Henricks, 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 Rules of Appellate 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 12 May 2024 to file a Brief on Behalf of Appellant. The Brief on Behalf of Appellant is currently due on 12 April 2024. Pursuant to Rule 24.1(b), the undersigned counsel assert:

1. Statement of the Case. On 31 March 2023, an enlisted panel sitting as a general court-martial convicted appellant, PFC Donte Brown, contrary to his pleas, of just one specification of aggravated assault with a dangerous weapon upon an intimate partner (also known as domestic violence) in violation Article 128,

UCMJ, 10 U.S.C. § 928 (R. at 51; Statement of Trial Results).¹ After electing to be sentenced by the military judge, the appellant was sentenced on 31 March 2023 to reduction to the grade of E-1, forty months confinement, and a dishonorable discharge. (Statement of Trial Results; R. at 749).

On 26 April 2023, the convening authority approved the findings and adjudged sentence. (Convening Authority Action). On 2 May 2023, the military judge entered Judgment. (Modified Judgment of the Court). This court docketed appellant's case on 16 August 2023. (Referral and Designation of Counsel).

2. Appellant's record of trial was received in the Defense Appellate Division on 16 August 2023 and is 1,363 pages long. The current due date is 12 April 2024. Appellant concurs with this request for delay and is still confined.

3. Out of Time Explanation. The Undersigned counsel and all counsel of record were on approved leave last week. Upon arriving back, the undersigned has one 'finalized' brief with four assignments of error (and two issues of first impression) and three reply briefs due on or before the Appellant's brief. This motion was drafted on the first duty day back from leave and co-counsel's leave. The undersigned did not anticipate the three reply briefs which were filed the day

¹ The second specification of domestic violence was dismissed by the military judge after findings were announced as the panel made exceptions and substitutions that created a multiplicity/double jeopardy issue. (R. at 697).

before, or while counsel was on leave. To ensure that all counsel assigned to this case can review the record of trial and complete review of the brief, a last extension is needed.

4. Justification for Extension. First, Appellant is still awaiting receipt of his record of trial which was not waived. (Post Trial Appellate Rights). Second, the first undersigned counsel graduated Command and General Staff College on 17 August 2023 with orders to report to Defense Appellate Division on or before 8 September 2023. The undersigned was assigned to this case on 22 August 2023 before completing inprocessing. Since arriving in September, the undersigned counsel has filed the following: *United States v. Hunter*, 20230313 (five assignments of error); *United States v. Myers*, 20230100 (two assignments of error); *United States v. Charland*, 20220512 (one assignment of error), *United States v. Wilson*, 23-0225/AR (Court of Appeals for the Armed Forces (CAAF) Brief and Reply Brief, alleging 1 error with five parts); *United States v. Green*, 20210656 (alleging four assignments of error); and *United States v. Mitchell*, 20230199 (alleging four assignments of error). The undersigned also argued *United States v. Wilson* at CAAF.

5. Additionally, since the last extension, first undersigned counsel has submitted, along with co-counsel, *United States v. Dickerson*, 20220118 (alleging three assignments of error); *United States v. Ford*, 20230263 (alleging three

assignments of error) and an associated judicial notice motion; *United States v. Martin*, 20230234 (one assignment of error); *United States v. Burch*, 20230576 (sub-jurisdictional) (four assignments of error, one motion, and one response motion); *United States v. Ironhawk*, Misc 20240057 (extraordinary writ response); *United States v. Padgett*, 20220169 (three assignments of error, one motion, and one response); *United States v. Charland*, 20220512 (motion for reconsideration); *United States v. Hulihan (III)*, 20220552 (one assignment of error); and *United States v. Brassfield*, 20230516 (sub-jurisdictional cases with two assignments of error), *United States v. Flannagan*, 2023028 (five assignments of error), *United States v. Charland (CAAF)*, *United States v. Hulihan (III)*, 20220552 (reply brief); *United States v. Lalor*, 20230136 (brief and reply brief); *United States v. Moreno*, 20230140 (Motion to Attach, Motion in Opposition, Brief alleging one assignment of error); *United States v. Kivenas*, 20230465 (appellant's brief); *United States v. McTear*, 20220531 (three assignments of error); *United States v. Nguyen*, 20230319 (three assignments of error); and *United States v. Voskuil*, 20230300 (one assignment of error and motion to attach). Likewise, after reviewing the records, there have been three withdrawals during this time (*Grant*, 20230158; *Giaquinto*, 20230532; *Mann*, 20230480; and *Redich*, 20230308) and motions under Mil. R. Evid 412 and 513 (*McTear*, 20220531, *Goins*, 20220088, *Park*, 20220311).

6. Additionally, by the current due date, first undersigned counsel anticipates filing the following *Park*, 20220311 (four assignments of error); *Hunter* (Reply Brief); *Green* (Reply Brief), and *Myers* (Reply Brief) and potentially *United States v. Goins*, 20220088 (seven assignments of error with nine *Grosteffon* matters currently in the review process). Appellant's only other extensions are in *Goins* and *Park*, 20220311 (final due Thursday).

7. The undersigned is the primary reviewing counsel on thirty-three cases (including seven contests) at the Army Court and lead counsel on seven cases including three contested cases, a mixed plea, and one "naked" plea. The undersigned is also the Branch Chief responsible for one pending Article 62 appeal (*United States v. Davis*, Misc 20240078).² Every case the undersigned is lead counsel has at least one assignment of error.

In this particular case, there will be at least three assignments of error including an issue of first impression regarding an expert denial for a specific area that the Army court has never written an opinion on.

8. Consistent with Army Reg. 27-26, Rules of Professional Conduct for Lawyers, undersigned request additional time to ensure that all due diligence has

² In the previous extension request, there was a second Art. 62, however, the government notified the undersigned on 4 March that it would not accept the Art. 62.

been done to adequately review, investigate, research, and draft matters on behalf of appellant, as well as fulfill counsel's ethical obligation to represent his interests.

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

PANEL NO. 4

MOTION FOR
EXTENSION OUT OF TIME



GRANTED:

DENIED:

DATE: 11 APR 2024

Robert D. Luyties
Major, Judge Advocate
Branch Chief
Defense Appellate Division

PANEL NO. 4

MOTION FOR
EXTENSION (5)

GRANTED: **FINAL**

DENIED:

DATE: 11 APR 2024

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to the Army Court of Criminal Appeals, the respondent, the Government Appellate Division, and the Defense Appellate Division on 9 April 2024.



ROBERT D. LUYTIES
Major, Judge Advocate
Branch Chief,
Defense Appellate Division