IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES, Appellee v. Specialist (E-4) **TAYRON D. DAVIS** United States Army, Appellant	**MOTION FOR RECONSIDERATION OF FINALITY AND MOTION FOR EXTENSION (5)** Docket No. ARMY 20220272 Tried at Kaiserslautern, Germany on 14 February 2022, 11 April 2022, 19 May 2022, and 23-24 May 2022 before a general court-martial convened by Commander, Headquarters, 21st Theater Sustainment Command, Colonel Charles Pritchard and Lieutenant Colonel Tom Hynes, Military Judges, 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, 24, and 31 of this court's Rules of Appellate Procedure, and move for a thirty-day extension of time until 17 June 2023 to file a Brief on Behalf of Appellant.

1. This is a contested case involving two specifications of an Article 120 offense. The transcript and associated exhibits are approximately 600 pages. The sentence adjudged on 24 May 2022 included confinement for 120 days and a dishonorable discharge. Appellant is no longer in confinement.

2. On 12 April 2023, this court granted appellant's Motion for Extension (4), indicating appellant would receive no additional extensions. The primary justification for the Motion for Extension (4) was appellate defense counsels' on-going investigation into whether the

military judge, Colonel Jack Pritchard, was improperly replaced as the military judge. Two days after appellant filed the Motion for Extension (4), appellant filed a Motion for Appellate Discovery relating to this matter. That discovery motion, which is critical to appellant's appeal, is pending disposition.

3. On 9 May 2023, a different panel of this court granted, in part, an appellate discovery request in *United States v. Coley* that sought information similar to appellant's motion in this case. (Appendix). Specifically, the court ordered that Judge Pritchard provide the reasons for being replaced with a suspense date of 8 June 2023. (Appendix). *Coley* was one the cases identified in appellant's motion, and Judge Pritchard's reasons for being replaced in *Coley* was part of the information appellant requested.

4. The requested discovery that is pending in this case is necessary to properly frame the facts, issues, and argument before this court. The representation of appellant will be negatively impacted without such material. Given this, there is good cause for the reconsideration of finality and a grant of an additional extension. Importantly, even if this court does not ultimately grant the discovery request, a reconsideration of finality and an additional extension is still warranted to determine the impact of the discovery ordered in *Coley* to appellant's case.

5. Appellant's brief is currently due on 18 May 2023. Appellant requests a thirty-day extension of time until 17 June 2023.

6. Consistent with Army Reg. 27-26, Legal Services: Rules of Professional Conduct for Lawyers (28 Jun. 2018), the first undersigned counsel requests additional time to fulfill counsel's ethical obligation to represent appellant's interest.

7. Appellant consents to this extension request.

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

[redacted]

PANEL NO. 3

MOTION FOR RECONSIDERATION OF FINALITY

BRYAN A. OSTERHAGE
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division

GRANTED [redacted]

DENIED: _____

[redacted]

DATE: 12 May 2023

JONATHAN F. POTTER
Senior Capital Defense Attorney
Appellate Defense Counsel
Defense Appellate Division

MOTION FOR EXTENSION (5)

GRANTED: [redacted]

DENIED: _____

DATE: 12 May 2023

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to the Army Court and Government Appellate Division on 11 May 2023.

[redacted]
BRYAN A. OSTERHAGE
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division