

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee

MOTION FOR EXTENSION (4)

v.

Docket No. ARMY 20220272

Specialist (E-4)
TAYRON D. DAVIS
United States Army,
Appellant

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 and 24 of this court's Rules of Appellate Procedure, and move for a thirty-day extension of time until 18 May 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. While the first undersigned counsel has completed the review of the case, the undersigned counsel are presently investigating a matter relating to the detailing of the military judge that may greatly impact the issues presented to this court. More specifically, the undersigned counsel have reason to believe that after appellant filed a motion for a unanimous verdict, the military judge removed himself from appellant's case due the military judge's controversial ruling on a

similar motion in a separate case, *United States v. Dial*. The undersigned have recently reached out to, and received responses from, the Chief of the Trial Judiciary, the Office of The Judge Advocate General, and the Government Appellate Division. The undersigned anticipate filing a motion for appellate discovery with this court in the next forty-eight hours. As this issue calls into question whether appellant received a trial that was fair in both fact and appearance and, accordingly, whether the findings and sentence in his case are correct in law and fact and should be approved, an extension is warranted to complete this inquiry.

3. As additional justification for the extension, the first undersigned counsel recently completed oral argument in *United States v. Hasan*, a death penalty case, on 28 March 2023 at the Court of Appeals for the Armed Forces (CAAF), and considerable time and effort was expended in preparation. The first undersigned counsel is also detailed to ten other active cases, including one that is due to this court on the same date as the above-captioned case, and the first undersigned counsel continues serving as an acting branch chief and anticipates acting in such capacity for the next thirty days.

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


5. 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.

6. Appellant consents to this extension request.

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

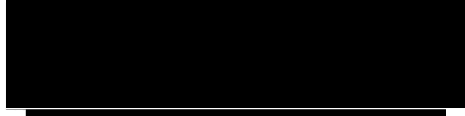
PANEL NO. 3

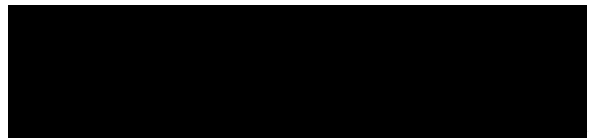
MOTION FOR EXTENSION (4)

GRANTED:  FINAL

DENIED: _____

DATE: 12 APR 2023


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


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

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 April 2023.

A large black rectangular redaction box covering the signature of Bryan A. Osterhage.

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

From: [USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling](#)
To: [Osterhage, Bryan A MAJ USARMY \(USA\)](#); [USARMY Pentagon HQDA OTJAG Mailbox TJ Service](#)
Cc: [USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice](#); [USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice](#); [Potter, Jonathan F CIV USARMY HQDA OTJAG \(USA\)](#)
Subject: RE: Davis - 20220272 - Motion for Extension (4) (20230411)
Date: Wednesday, April 12, 2023 1:06:00 PM
Attachments: [Davis - 20220272 - Motion for Extension \(4\) \(20230411\).pdf](#)

Your pleading is in compliance with the Court's Rules of Practice and Procedure, and the pleading is accepted.

Very respectfully,

Office of the U.S. Army Clerk of Court
9275 Gunston Road, Bldg. 1450
Fort Belvoir, VA 22060-5546

From: Osterhage, Bryan A MAJ USARMY (USA) <bryan.a.osterhage.mil@army.mil>
Sent: Tuesday, April 11, 2023 10:12 PM
To: USARMY Pentagon HQDA OTJAG Mailbox Clerk of Court eFiling <usarmy.pentagon.hqda-otjag.mbx.clerk-of-court-efiling@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox TJ Service <usarmy.pentagon.hqda-otjag.mbx.tj-service@army.mil>
Cc: USARMY Pentagon HQDA OTJAG Mailbox DAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil>; USARMY Pentagon HQDA OTJAG Mailbox GAD ACCAservice <usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil>; Potter, Jonathan F CIV USARMY HQDA OTJAG (USA) <jonathan.f.potter3.civ@army.mil>
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Very respectfully,

Bryan Osterhage
MAJ, JA
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Defense Appellate Division
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