

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION FOR EXTENSION FOR
APPELLANT'S REPLY BRIEF
OUT OF TIME**

v.

Docket No. ARMY 20230313

Staff Sergeant (E-6)
DAVID L. HUNTER,
United States Army,

Appellant

Tried at Fort Cavazos, Texas, on 16
February and 1 June 2023, before a
general court-martial appointed by the
Commander, III Corps and Fort
Cavazos, Lieutenant Colonel Maureen
A. Kohn, 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 out of time. The undersigned appellate defense counsel requests a seven (7) day extension of time until 12 April 2024 to file a Reply Brief on Behalf. The Reply Brief is currently due on 5 April 2024. The primary reason for this request is that *all* counsel of record on this case have approved leave/will be out of the office from 29 March 2024 through the current due date (Friday). Pursuant to Rule 24.1(b), the undersigned counsel assert:

1. Statement of the Case. On 1 June 2023, a military judge sitting as a general court-martial convicted appellant, Staff Sergeant David Hunter, in

accordance with his plea (which plea took place on 16 February 2023), of one specification of negligent homicide in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934 [UCMJ]. (R. at 12, 55; Charge Sheet). The military judge sentenced appellant to nine months of confinement, no reduction in rank or forfeitures despite a request from the trial counsel, and in accordance with the dictated term in the Plea Agreement, a dishonorable discharge. (R. at 194, 199; Statement of Trial Results).

On 13 June 2023, the convening authority disapproved appellant's request for deferment and waiver of automatic forfeitures for appellant's wife and twenty-three-day old son without explanation and took no action on the findings and sentence. (Action). On 19 June 2023, the military judge entered judgment (Judgment) and shortly thereafter, appellant requested speedy post-trial processing (Speedy Trial Request). On 30 October 2023, this court docketed appellant's case. (Referral).

Appellant filed his brief on 14 December 2024. After obtaining this Court's permission, Appellant submitted an additional assignment of error on 27 December 2023. The Government responded on 29 March 2024. This extension is the first requested in this case and is for the Appellant's Reply Brief.

2. Justification for Out of Time Filing. All counsel familiar with this case were, at the time of the government's filing, and will be, on previously approved

leave during the relevant response window. The undersigned counsel was on approved leave on the date the government responded (29 March 2024) and is still on approved leave which is why this response is within the five-day window. All other counsel of record were also out the entirety of the response window starting 30 March 2024. After reviewing the government's response, Appellant intends to reply since this court has not previously written on two of the specific issues.

3. Appellant's record of trial was received in the Defense Appellate Division on 30 October 2023 and is 411 pages long with a 199-page record. The current due date is 5 April 2024. Appellant concurs with this request for delay and is no longer confined.

4. The primary reason for this requested extension is that all counsel familiar with this case will be on previously approved leave during the relevant response window. After reviewing the government's response, Appellant intends to reply since this court has not previously written on the specific issues. This is the first additional extension in this case and is only for an additional seven (7) days.

5. 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 one 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.

6. Additionally, since filing Appellant's brief in this case, the 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 Petition); *United States v. McTear*, 20220531 (three assignments of error); *United States v. Moreno*, 20230140 (one assignment of error); and *United States v. Lalor*, 20230136 (two assignments of error and reply brief). Likewise, after reviewing the records, there have been three withdrawals during this time (*Grant*, 20230158; *Giaquinto*, 20230532; and *Redich*,

20230308, *Mann*, 20230480) and motions under Mil. R. Evid 412, 513, and the Adam Walsh Act (*McTear*, 20220531; *Goins* 20220088; *Davis*, 20230011).

7. Additionally, by the current due date, first undersigned counsel anticipates filing *United States v. Green* Reply Brief, *United States v. Voskuil*, 20230300, *United States v. Park*, 20220311 (five assignments of error with a 3,000 page ROT and on final extension) and has completed *United States v. Goins*, 20220088 which is currently being reviewed (seven assignments of error).

The undersigned is the primary reviewing counsel on thirty-three cases (including nine contests) at the Army Court and lead counsel on seven cases including three contested cases and one “naked” plea. The undersigned is also the Branch Chief responsible for one pending Article 62 appeal (*United States v. Davis*, Misc 20240078) and two other potential Article 62 appeals where the government is awaiting the record of trial. Every case the undersigned is lead counsel has at least one assignment of error. Finally, the Army Court has not currently addressed two of the issues raised in Appellant’s briefs that Appellant and the government are arguing so a reply brief is necessary to respond and assist the court.

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

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 OUT OF TIME

GRANTED:  _____

DENIED: _____

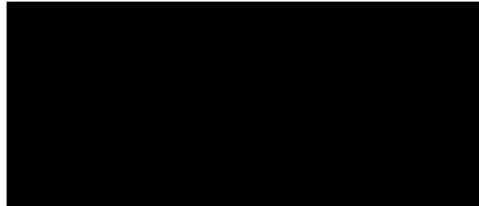
DATE: 5 APR 2024

MOTION FOR EXTENSION FOR APPELLANT'S REPLY BRIEF

GRANTED:  _____

DENIED: _____

DATE: 5 APR 2024



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on April 3, 2024.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division