

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF FOR A
NEW ASSIGNMENT OF ERROR**

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, 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 Rule 23 of this Court's Rules of Appellate Procedure, and move for leave to file a supplemental brief for a newly discovered assignment of error.

The original deadline to submit briefs in this case is 29 December 2023 (with the first automatic extension making it due no later than 28 March 2024). Due to the continuing prejudice Appellant alleges from the dilatory post-trial processing and Convening Authority's decisions exasperating Appellant's financial prejudice as well as Appellant's previous Speedy Post-Trial request, undersigned counsel expedited the processing of this case.

The relevant facts for this request are that the undersigned learned that the III Corps Office of the Staff Judge Advocate incorrectly advised the Convening Authority in the Staff Judge Advocate's Clemency Advice. The SJA made it seem like Appellant did not submit materials to effectuate waiver, when in fact, he repeatedly did.

On 14 December 2023, the undersigned counsel submitted Appellant's brief months ahead of the deadline. The brief consists of four assignments of error. On 15 December 2023, Appellant's original trial defense counsel, who is deployed to the Middle-East, was able to access his emails, and turned in an Affidavit showing that he had provided the necessary materials to effectuate waiver (along with the emails and replies). It also became clear the trial defense counsel turned it in more than once both in person and via e-mail with the government counsel acknowledging receipt. After receiving this affidavit and emails, it became clear that the Staff Judge Advocate's Clemency Advice was incorrect and misleading.

Given the other assignments of error in Appellant's first brief which look closely at the Convening Authority and Staff Judge Advocate's actions to effect both the trial and appellate process, this new assignment of error is part and parcel with the other assignments of error.

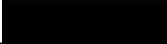
Accordingly, in this case, the undersigned could not competently represent appellant in his military appeal without advocating the newly discovered error that compounds the prejudice of the first four assignments of error.

Conclusion

WHEREFORE, appellant, through undersigned appellate defense counsel, respectfully request this Court to grant this motion.

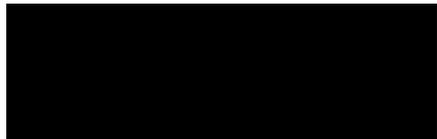
PANEL NO. 4

MOTION FOR
LEAVE TO FILE
SUPPLEMENTAL BRIEF

GRANTED: _

DENIED: _____

DATE: 28 December 2023



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 December 21, 2023.



MICHELLE L.W. Surratt
Paralegal Specialist
Defense Appellate Division

