

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO EXAMINE SEALED
MATERIALS (412)**

v.

Docket No. ARMY 20220531

Sergeant (E-5)

EDWARD T. McTEAR,

United States Army,

Appellant

Tried at Fort Stewart, Georgia, on 19-20 October 2022, before a general court-martial appointed by the Commander, Headquarters and Fort Stewart, Lieutenant Colonels Albert Courie and Trevor I. Barna, military judges, presiding.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

COMES NOW the undersigned appellate defense counsel, pursuant to Rules 6.9(a) and 23 of this court's Rules of Appellate Procedure, and moves to examine sealed materials contained in the record of *United States v. McTear*. The first undersigned appellate defense counsel, Captain [REDACTED], Major [REDACTED] [REDACTED] (Branch Chief, Defense Appellate Division), Lieutenant Colonel [REDACTED] [REDACTED] (Deputy Chief, Defense Appellate Division), and Colonel [REDACTED] (Chief, Defense Appellate Division) seek to examine the following portions of the record: prosecution exhibit 1, appellate exhibits II, II(A) and XIV, and pages 164-175 (containing an Article 39(a) hearing closed under the provisions of Military Rule of Evidence 412) and Associated audio recordings. These excerpts relate to a

series of Article 39(a) hearings closed pursuant the provisions of Military Rule of Evidence 412.¹

1. Statement of the Case

On 20 October 2022, a military judge sitting as a general court-martial convicted appellant, SGT Edward T. McTear, contrary with his pleas, of three specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ).² (R. at 456; Statement of Trial Results). That same day, the military judge sentenced appellant to reduction to the grade of E-1, forfeiture of all pay and allowances, twenty-four months confinement and a dishonorable discharge.³ (R. at 509 Statement of Trial Results). On 16 November 2022, the convening authority approved the sentence. (Convening Authority Action). On 1 February 2023, the convening authority superseded the previous action dated 16 November 2023 and disapproved the adjudged sentence pertaining to total forfeiture of all pay and allowances. (Convening Authority Action). On 2 February 2023, the military judge entered Judgement (Judgement of the Court). This court

¹ The seal order was not attached as a separate appellate exhibit but can be found on page seven of the record of trial.

² The military judge found appellant not guilty of The Specification of Charge II, Attempted Sexual Assault, in violation of Article 80, Uniform Code of Military Justice.

³ The military judge sentence appellant as follows:

Charge I and its specifications	Twenty-four Months
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docketed appellant's case on 19 September 2023. (Referral and Designation of Counsel).

2. Request:

Review of these materials is consistent with appellate defense counsel's obligations under Army Reg. 27-26, Rules of Professional Conduct for Lawyers, and is reasonably necessary to evaluate the effect of the military judge's evidentiary rulings on the appellant's trial and to determine whether trial defense counsel were ineffective. Review of the materials is reasonably necessary for appellant, through counsel, to determine whether issues exist that merit presentation to this honorable court for consideration as part of its Article 66, UCMJ, review. A review of the record and talking to associated parties indicate that the defense may have won portions of the Mil. R. Evid. 412 motion, however, it does not appear that defense utilized the evidence from a review of the record.

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

PANEL NO. 2

MOTION TO EXAMINE SEALED MATERIAL (412) [if fully approved]

GRANTED:

DENIED:

DATE: 27 February 2024

~~[If not fully approved]~~

~~MOTION TO EXAMINE
TRANSCRIPT PAGES 164-175
(AND ASSOCIATED
RECORDINGS)~~

~~GRANTED:~~

~~DENIED:~~

~~DATE:~~

~~MOTION TO EXAMINE
PROSECUTION EXHIBIT 1~~

~~GRANTED:~~

~~DENIED:~~

~~DATE:~~

~~MOTION TO EXAMINE~~



Amber L. Bunch
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division



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

~~APPELLATE EXHIBIT II~~

~~GRANTED:~~ _____

~~DENIED:~~ _____

~~DATE:~~ _____

~~MOTION TO EXAMINE
APPELLATE EXHIBIT II A~~

~~GRANTED.~~ _____

~~DENIED:~~ _____

~~DATE:~~ _____

~~MOTION TO EXAMINE
APPELLATE EXHIBIT XIV~~

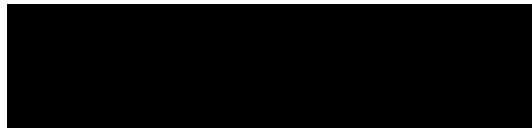
~~GRANTED:~~ _____

~~DENIED:~~ _____

~~DATE:~~ _____

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on February 26, 2024.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division