

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION FOR EXTENSION FOR
APPELLANT’S REPLY BRIEF**

v.

Docket No. ARMY 20230100

Staff Sergeant (E-6)
DAVID K. MYERS,
United States Army,

Appellant

Tried at Fort Moore, Georgia, on
6 October 2022, 9 December 2022,
27-28 February 2023, 2 March 2023,
before a general court-martial
appointed by the Commander,
Maneuver Center of Excellence,
Lieutenant Colonel Trevor Barna,
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 of Time. The undersigned appellate defense counsel requests a 7-day extension of time until 18 April 2024 to file a Reply Brief on Behalf of Appellant. The Reply Brief on Behalf of Appellant is currently due on 11 April 2024. The primary reason for this request is multiple counsel of record will be out of the office on approved leave or Temporary Duty during the relevant response window. Pursuant to Rule 24.1(b), the undersigned counsel assert:

1. On 2 March 2023, a military judge sitting at a general court-martial convicted appellant, Staff Sergeant (SSG) David K. Myers, contrary to his pleas, of

three specifications of child endangerment in violation of Article 119b, Uniform Code of Military Justice, 10 U.S.C. § 919b (2019) [UCMJ].¹ (R. at 576; Charge Sheet). The judge sentenced appellant to be reduced to the grade of E-1, to be confined for 270 days, and to receive a bad conduct discharge. (R. at 674).² The convening authority took no action on the findings and sentence, but waived automatic forfeitures for a period of 6 months effective 2 March 2023 with the direction they be paid to appellant's spouse.³ The military judge entered judgment on 14 March 2023.⁴

2. On 8 December 2023, appellant filed an initial brief. On 4 April 2024, the government responded. The current due date for appellant's reply brief is 11 April 2024. Appellant concurs with this request for delay and is no longer confined.

3. Appellant asks for this one-week delay as two undersigned counsel will be on leave or TDY in the days leading to and including the current due date.

¹ The military judge acquitted appellant of one specification of animal neglect in violation of Article 134, UCMJ.

² The military judge sentenced appellant to 90 days confinement each for Specifications 1,2, and 3 of Charge I, with all sentences to confinement running consecutively resulting in a total adjudged confinement of 270 days.

³ Convening Authority Action, dated 13 March 2023.

⁴ The Entry of Judgment needs to be corrected to read "automatic forfeitures of pay and allowances" per month because this was a general court-martial. Also, the convening authority appears to have effectuated defense counsel's 10 March 2023 request to "waive automatic forfeiture of pay and allowances."

4. The third undersigned counsel is currently on leave until 5 April 2024.

5. The fourth undersigned counsel is on leave until 8 April 2024. Then, he will be TDY between 10 to 12 April 2024 for this court's outreach argument for *United States v. Groce*.

6. 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.

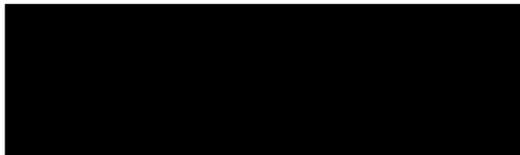
PANEL NO. 2

MOTION FOR
EXTENSION FOR
APPELLANT'S REPLY BRIEF

GRANTED: 

DENIED: _____

DATE: 5 April 2024



Stephen R. Millwood
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division



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 4, 2024.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division