

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

MOTION FOR EXTENSION (2)

v.

Docket No. ARMY 20230087

Staff Sergeant (E-6)
CORY N. PENVEN,
United States Army,

Appellant

Tried at Fort Carson, CO/USA, on
7 November 2022, 11 January 2023,
21-24 February 2023, before a general
court-martial appointed by the
Commander, 4th Infantry Division,
COL Jacqueline L. Emanuel, 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 civilian and appellate defense counsel request a 30-day extension of time until 17 January 2024 to file a Brief on Behalf of Appellant. The Brief on Behalf of Appellant is currently due on 18 December 2023. Pursuant to Rule 24.1(b), the undersigned counsel assert:

1. A general court-martial composed of officer and enlisted members convicted SSG Cory Penven (appellant), contrary to his plea, of one specification of sexual assault, in violation of Article 120, Uniform Code of Military Justice, 10

U.S.C. § 920 (2018) [UCMJ]. The military judge sentenced SSG Penven to be reduced to the grade of E-1, to be confined for four years, and to be discharged from the service with a dishonorable discharge. The convening authority took no action. SSG Penven is currently confined in the Joint Regional Correctional Facility, Fort Leavenworth, KS [JRCF].

2. Appellant's record of trial was received in the Defense Appellate Division on 24 July 2023 and is 520 pages long, to include sealed documents. The appellant was finally sent a copy of the record of trial on 15 September 2023 despite his request for a copy in his Post-Trial and Appellate Rights Advisement. The current due date is 18 December 2023. Appellant concurs with this request for delay. Appellate defense counsel have reviewed the record in its entirety and have completed an initial draft of appellant's opening brief, which is in the final stages of editing and is pending client review. Appellate counsel believe this will be the only extension that will be requested of the court.

3. The appellate defense counsel was assigned to this case on 27 July 2023. In the ninety days comprising extension (#1), the appellate defense counsel has filed the following: *United States v. Zavaleta*, 20230143 (request for withdrawal), *United States v. Penven*, 20230087 (motion to view sealed materials), *United States v. Tebyani*, 20230213 (request for withdrawal), *United States v. Lloyd*, 20230280 (Appellant's Brief).

4. The civilian defense counsel received this case on 11 August 2023. In the ninety days comprising extension (#1), the civilian defense counsel has filed an opening brief in *United States v. Rankin* (NMCCA) on 7 September 2023 and a grant brief to CAAF in *United States v. Guihama* on 27 September 2023. In addition to her appellate cases, civilian counsel also litigated a contested general court-martial [GCM] at Camp Humphreys, South Korea from 23 August – 1 September 2023 and participated in a confidential mediation in the Southern District of New York from 19-20 October 2023.

5. Appellate counsel are presently awaiting receipt of trial defense counsel's *Dorman* files and are in the process of coordinating final client meetings with the appellant through the JRCF, Fort Leavenworth, KS.

6. Consistent with Army Reg. 27-26, Rules of Professional Conduct for Lawyers, the undersigned counsel 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. While counsel seek a 30-day extension, submission is intended to occur in advance of the expiration of 30 days given the near complete status of the brief.

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

PANEL NO. 2

MOTION FOR
EXTENSION (2)


GRANTED:

DENIED:

DATE: 15 December 2023



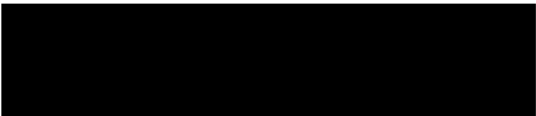
CATHERINE M. CHERKASKY, Esq.
Civilian Defense Counsel



Devin V. Vickers
Captain, Judge Advocate
Appellate Defense Counsel
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 13, 2023.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division