

**IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

UNITED STATES,  
Appellee

**BRIEF ON BEHALF OF  
APPELLEE**

v.

Docket No. ARMY 20220118

Specialist (E-4)  
**JACOB A. DICKERSON**  
United States Army,  
Appellant

Tried at Fort Bragg, North Carolina,<sup>1</sup>  
on 29 December 2021 and 14 March  
2022, before a general court-martial  
convened by the Commander,  
Headquarters, Fort Bragg, Colonel G.  
Bret Batdorff and Colonel Stephan E.  
Nolten, Military Judges, presiding.

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

**Assignments of Error<sup>2</sup>**

**I. WHETHER THE EVIDENCE FOR THE  
CHARGE OF DERELICTION OF DUTY IS  
LEGALLY AND FACTUALLY SUFFICIENT  
WHERE THE DUTY WAS NOT STATED AND  
REQUIRED APPELLANT TO SELF-  
INCRIMINATE IN ORDER TO COMPLY.**

**II. WHETHER FORT LIBERTY'S FLAGRANT  
POST-TRIAL PROCESSING DELAY WAS BOTH**

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<sup>1</sup> At the time of trial, the installation was named Fort Bragg. Effective 2 June 2023, the installation was officially redesignated as Fort Liberty:  
[https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/ARN38392-AGO\\_2023-13-000-WEB-1.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN38392-AGO_2023-13-000-WEB-1.pdf).

<sup>2</sup> The government reviewed the matters submitted by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and respectfully submits they lack merit. Should this Court consider any of those matters meritorious, the government requests notice and an opportunity to file a supplemental brief addressing the claimed error.

**UNREASONABLE AND UNCONSTITUTIONAL,  
THUS WARRANTING RELIEF.**

**Statement of the Case**

On 14 March 2022, a military judge sitting as a general court-martial convicted appellant, in accordance with his pleas, of one specification of wrongful use of a controlled substance and one specification of dereliction of duty in violation of Articles 112a and 92, Uniform Code of Military Justice, 10 U.S.C. §§ 912a and 892 [UCMJ]. (R. at 19, 62; Statement of Trial Results [STR]).<sup>3</sup> The military judge sentenced appellant to be confined for seventy-five days and to be discharged from the service with a bad-conduct discharge.<sup>4</sup> (R. at 113; STR).

**Statement of Facts**

**A. Appellant's Misconduct.**

Appellant was a military police (MP) officer stationed at Fort Bragg. (Pros. Ex. 1). He was MP qualified in 2019. (R. at 31). On 24 September 2021, appellant was on duty as an MP, and his shift was scheduled from 0400 to 1230.

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<sup>3</sup> Additionally, appellant was charged with one specification of wrongful distribution of a controlled substance in violation of Article 112a, UCMJ. (Charge Sheet). In accordance with his plea agreement, appellant pleaded not guilty to this specification, and the government moved to dismiss it before findings. (R. at 19, 62; App. Ex. II; STR).

<sup>4</sup> The military judge sentenced appellant to be confined for seventy-five days for Specification 2 of Charge I and seventy-five days for The Specification of Charge II. (R. at 113; STR). In accordance with his plea agreement, the sentences to confinement were to run concurrently. (R. at 113; App. Ex. II; STR).

(Pros. Ex. 1; R. at 38). After receiving his shift brief, appellant was tasked to oversee security, from his MP vehicle, at the Bragg Boulevard Gate. (Pros. Ex. 1; R. at 38–39). Part of his duties included looking for anyone trying to access the gate without authorization. (R. at 43). If someone entered the gate illegally, his job was to call dispatch and pursue until called off. (R. at 44).

At approximately 1100, while inside the government vehicle and still on duty as an MP, appellant placed a phone call to an individual off-post using his personal cell phone. (Pros. Ex. 1; R. at 39, 44). Appellant made this call to arrange for the purchase of Oxycodone, a Schedule II controlled substance for which he had no valid prescription, for his personal use. (Pros. Ex. 1; R. at 39). The duration of the phone call was approximately ninety seconds. (R. at 44). He arranged for the purchase of drugs when he should have been focused on the gate's security. (R. at 39). While he was on the phone, his attention was not fully on the gate, and he was distracted. (R. at 45).

After appellant finished his shift at 1230, he met the individual off-post and purchased some amount of Oxycodone. (Pros. Ex. 1). That same day, appellant crushed the pills he had purchased and snorted the substance. (Pros. Ex. 1; R. at 29). Appellant knowingly ingested the substance and knew the substance was Oxycodone because the pills looked like Oxycodone he had taken in the past and had the same effect on him. (Pros. Ex. 1; R. at 29–30). Law enforcement collected

the pills, and the pills tested positive for Oxycodone. (R. at 30). Appellant had no legal justification or excuse to use the Schedule II controlled substance, and he did not have any valid medical purpose for using the Oxycodone. (Pros. Ex. 1; R. at 30, 34–35).

### **B. Plea Agreement**

On 3 February 2022,<sup>5</sup> appellant and the convening authority entered into a plea agreement which required appellant to plead guilty in exchange for sentencing limitations. (App. Ex. II). The following sentencing limitations were agreed upon: to serve a minimum of seventy-five days confinement and maximum ninety-days confinement for each specification, to be served concurrently. (App. Ex. II). A bad-conduct discharge would be adjudged. (App. Ex. II). All other lawful punishments would not be adjudged. (App. Ex. II).

### **C. Post-trial processing.**

Appellant's court-martial adjourned on 14 March 2022. (R. at 114). On 21 March 2022, appellant submitted post-trial matters requesting that the convening authority waive automatic forfeitures for the duration of his sentence and “consider granting any and all other relief available.” (Post-Trial Submission). On 6 April 2022, the convening authority took no action on the findings or sentence. (Action).

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<sup>5</sup> The plea agreement is dated 27 January 2022; however, the agreement was not signed by the convening authority until 3 February 2022. (App. Ex. II).

The military judge entered judgment on 13 September 2022. (Judgment). On 23 February 2023, appellant requested speedy post-trial processing. (Speedy Post-Trial Request). The trial counsel completed the pre-certification on 30 May 2023. (Precertification). The military judge authenticated the record on 30 May 2023. (Authentication). The court reporter certified the transcript on 20 June 2023. (Certification). The Office of the Staff Judge Advocate (OSJA) provided a memorandum, dated 1 August 2023, detailing the post-trial processing of the case. (Post-Trial Processing Memorandum). This court docketed the case on 15 August 2023. (Referral and Designation of Counsel).

### **Assignment of Error I**

**WHETHER THE EVIDENCE FOR THE CHARGE OF DERELICTION OF DUTY IS LEGALLY AND FACTUALLY SUFFICIENT WHERE THE DUTY WAS NOT STATED AND REQUIRED APPELLANT TO SELF-INCRIMINATE IN ORDER TO COMPLY.**

### **Standard of Review**

Contrary to appellant's framing of this assignment of error, a military judge's decision to accept a guilty plea is reviewed for an abuse of discretion, and questions of law arising from the guilty plea are reviewed de novo.<sup>6</sup> *United States v. Kim*, 83 M.J. 235, 238 (C.A.A.F. 2023). "A military judge abuses his or her

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<sup>6</sup> Appellant states that questions of legal and factual sufficiency are viewed de novo (Appellant's Br. 5); however, because appellant pleaded guilty, his view on the appropriate standard of review is incorrect.

discretion by ‘fail[ing] to obtain from the accused an adequate factual basis to support the plea—an area in which [appellate courts] afford significant deference’ or if his or her ruling is based on an erroneous view of the law.” *Id.* (quoting *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008)). Military judges are given broad discretion on the question of whether to accept a guilty plea, and reviewing courts should only find error if “the record as a whole show[s] a substantial basis in law and fact for questioning the guilty plea.” *Inabinette*, 66 M.J. at 322. “Even if a guilty plea is later determined to be improvident, a reviewing court may grant relief only if it finds that the military judge’s error in accepting the plea ‘materially prejudice[d] the substantial rights of the accused.’” *United States v. Moratalla*, 82 M.J. 1, 4 (C.A.A.F. 2021) (citing UCMJ, art. 45(c)) (alteration in original).

### **Law and Argument**

The military judge did not abuse his discretion by accepting appellant’s guilty plea. Considering the significant deference owed to the military judge’s decision, appellant’s statements under oath during his guilty plea, and the uncontroverted facts contained within the stipulation of fact, there is no basis in law or fact to question the plea. Accordingly, there was no error, and this court should affirm.

As charged in this case, the elements of dereliction in the performance of duties, Article 92, UCMJ, are as follows: (1) That the accused had certain duties; (2) That the accused knew or reasonably should have known of the duties; and (3) That the accused was, through neglect or culpable inefficiency, derelict in the performance of those duties. *Manual for Courts-Martial, United States* (2019 ed.) [MCM], pt. IV, ¶ 18.b.3.

“A duty may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the Service.” MCM, pt. IV, ¶ 18.c.3.a. “A person is derelict in the performance of duties when that person . . . performs them in a culpably inefficient manner. . . . Culpable inefficiency is inefficiency for which there is no reasonable or just excuse.” MCM, pt. IV, ¶ 18.c.3.c. Culpable inefficiency is further defined to mean “a reckless, gross, or deliberate disregard for the foreseeable results of a particular (act) (or) (failure to act).” Dep’t of Army, Pam. 27-9, Legal Services: Military Judges’ Benchbook, para. 3-16-4 (29 Feb. 2020) [Benchbook]. “Dereliction is defined as a failure in duty, a shortcoming, or delinquency.” *Id.* 4.

Appellant admits that he was on duty as a military police officer on 24 September 2021. (Pros. Ex. 1, p. 1; R. at 38). He further admits that he was briefed on his duties that day, it was a standard brief among military police, and his task was to oversee security from the government vehicle and report illegal activity

to the dispatch. (Pros. Ex. 1, p. 1; R. at 38–39). Appellant also admits that he deviated from those duties when he called a drug dealer to purchase drugs. (R. at 39).

My job was to enforce the law and keep Soldiers safe. When I placed this call, I knew I was speaking to a drug dealer. I was using the time I should have been focused on security at the gate to focus on purchasing on (sic) drugs. There is no legal reason or excuse for me to (sic) taking away from my time on duty, while in a military police vehicle, to plan a drug deal.

(R. at 39). Appellant’s testimony during his guilty plea proved all the elements of dereliction of duty by culpable inefficiency beyond a reasonable doubt.

Appellant argues that an individual is not derelict in their duties if they fail to report their own misconduct. (Appellant’s Br. 8). He goes on to argue that had he reported the person for whom he coordinated the purchase of drugs from, he would have implicated himself. (Appellant’s Br. 8). However, the basis for appellant’s dereliction of duty charge was the phone call to purchase drugs while on-duty in the government vehicle, not his failure to report himself.<sup>7</sup> (Charge Sheet). The additional basis for being derelict in his duties for not reporting

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<sup>7</sup> While the government argues that appellant’s dereliction was not his failure to report himself, appellant agreed in his Stipulation of Fact that “the facts contained in this stipulation are true and admissible despite any Military Rule of Evidence or Rule for Court Martial that might otherwise make them inadmissible and may be considered by the Military Judge in determining the providency of [appellant’s] plea[.] [Appellant] waives any objection he may have to the admissibility of the stipulated facts into evidence.” (Pros. Ex. 1).



himself appears to have been introduced by appellant, not the government, during his providence inquiry when he read from a prepared document that his attorneys helped him organize. (R. at 29, 40, 46; *See* Charge Sheet and Pros. Ex. 1). The military judge noted that appellant had provided two duties that he had violated and clarified the factual basis for both. (R. at 46–47).

As the Court of Appeals for the Armed Forces has explained, “The factual predicate [of a guilty plea] is sufficiently established if ‘the factual circumstances *as revealed by the accused himself* objectively support that plea.’” *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996) (emphasis added). In the present case, appellant admitted, under oath, facts that were sufficient to establish that he was derelict in his duties. (R. at 38–47; Pros. Ex. 1). It is simply not the role of this court—nor any other appellate court—to “speculate post-trial as to the existence of facts which might invalidate an appellant’s guilty pleas.” *Id.* (quoting *United States v. Johnson*, 42 M.J. 443, 445 (C.A.A.F. 1995)) (internal quotation marks omitted); *see also United States v. Harrison*, 26 M.J. 474, 476 (C.M.A. 1988) (“Appellant pleaded guilty and formally admitted that he made a false official statement. Furthermore, he expressly stated to the judge that the clerk’s questions were related to her job. Post-trial speculation on the scope of her duties based on the purported absence of particular regulatory authority cannot be countenanced.”) (internal citations omitted).

In *United States v. Craion*, the appellant was assigned specific military tasks but deviated from his tasks to commit sex offenses while on-duty and in the workplace. 64 M.J. 531, 536 (Army Ct. Crim. App. 2006). At trial, the appellant argued that his seven-to-ten-minute delays were reasonable because of their short duration. *Id.* This court held that “when examining whether a departure from duty that is not expressly authorized can be the basis of a dereliction charge, one must consider both the basis of the departure and the duration of time devoted to it. Where the basis of the departure is inherently unreasonable, such as the forsaking of one’s military duties to commit a crime, even the briefest detours can constitute derelictions.” *Id.* The court expressly rejected appellant’s argument that his on-duty misconduct should be considered “reasonable delays in the performance of assigned tasks” and held that he “abandoned his duties for the time required to engage in the sex offenses.” *Id.* at 537. Similarly, this court should reject appellant’s argument that the time he was on the phone calling the drug dealer was *de minimis* and similar to a taking an unsanctioned bathroom break. (Appellant’s Br. 10). Like *Craion*, if this court were to “categorize activities into those implicitly authorized given the circumstances of an order and those unauthorized under any circumstance,” appellant’s phone call to purchase illegal drugs is “at the furthest extreme of the latter[,]” and, even though it was only for ninety seconds, the departure was “inherently unreasonable.” 64 M.J. at 537.

Appellant argues that there is no evidence that anyone attempted to enter the gate without authority or that any vehicle passed through the gate during the ninety seconds appellant was coordinating the purchase of drugs. (Appellant's Br. 9). The Courts of Military Appeals [C.M.A.] noted that "the punitive article of dereliction of duty holds a service-member accountable for the nonperformance or faulty performance of duty regardless of its demonstrated effect on a particular military mission." *United States v. Lawson*, 36 M.J. 415, 422 (C.M.A. 1993). While it may be relevant for sentencing, the fact that no harm was caused by appellant's dereliction is not relevant to appellant's finding of guilty since he was not charged with dereliction of duty that resulted in, e.g., death or grievous bodily harm to another. (*See* Charge Sheet; *MCM*, pt. IV, ¶ 18.b.3.d.).

Therefore, there was a sufficient factual basis to support appellant's guilty plea. Accordingly, there was no error and the findings of guilt should be affirmed.

## **Assignment of Error II**

**WHETHER FORT LIBERTY'S FLAGRANT POST-TRIAL PROCESSING DELAY WAS BOTH UNREASONABLE AND UNCONSTITUTIONAL, THUS WARRANTING RELIEF.**

### **Standard of Review**

This court conducts a de novo review of claims of unreasonable post-trial delay. *United States v. Winfield*, 83, M.J. 662, 666 (Army Ct. Crim. App. 2023).

## Law

There are two distinct analyses in addressing claims of post-trial delay: determining whether appellant suffered a due process violation under the Constitution, and determining sentence appropriateness under Article 66(d), UCMJ. *United States v. Simon*, 64 M.J. 205, 207 (C.A.A.F. 2006).

### A. Fifth Amendment Procedural Due Process.

Servicemembers convicted at courts-martial have a due process right, under the Fifth Amendment, to post-trial processing without unreasonable delay. *Diaz v. Judge Advocate General of the Navy*, 59 M.J. 34, 38 (C.A.A.F. 2003). In order to analyze post-trial delays and due process, appellate courts analyze four factors (*Barker* factors) that examine: “(1) the length of the delay; (2) the reasons for the delay; (3) the appellant’s assertion of the right to timely review and appeal; and (4) prejudice.” *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006).<sup>8</sup> The four *Barker* factors must be balanced, and “no single factor [is] required to find that post-trial delay constitutes a due process violation.” *United States v. Toohey*, 63 M.J. 353, 361 (*Toohey II*) (C.A.A.F. 2006)

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<sup>8</sup> Additionally, Courts of Criminal Appeals (CCAs) will also further examine prejudice in light of three primary sub-factors: (1) prevention of oppressive incarceration; (2) minimization of appellant’s anxiety and concern while awaiting the outcome of the appeal; and (3) limiting the possibility of impairment of the grounds for appeal and defense at a possible rehearing. *Moreno*, 63 M.J. at 139–40. None of these factors are implicated in this case.

(quoting *Moreno*, 63 M.J. at 136) (citing *Barker*, 407 U.S. at 533). The *Barker* analysis, however, is not required if this court determines that any due process violation is harmless beyond a reasonable doubt. *United States v. Finch*, 64 M.J. 118, 125 (C.A.A.F. 2006).

In situations where an appellant is unable to show they have suffered prejudice, the court will find a due process violation only when, “in balancing the other three factors, [the post-trial] delay is so egregious that tolerating it would adversely affect the public’s perception of the fairness and integrity of the military justice system.” *Toohy*, 63 M.J. at 362. If the court finds a due process violation, the burden shifts to the government to prove the constitutional error was harmless beyond a reasonable doubt. *United States v. Ashby*, 68 M.J. 108, 125 (C.A.A.F. 2009) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). In determining whether a due process error was harmless beyond a reasonable doubt, the court analyzes the case for prejudice. *Id.* This analysis is “separate and distinct from the consideration of prejudice as one of the four *Barker* factors.” *Id.* Under this review, the court considers “the totality of the circumstances” based on the “entire record.” *Id.* The court “will not presume prejudice from the length of the delay alone,” but instead requires “evidence of prejudice in the record.” *Id.*

## **B. Sentence Appropriateness.**

Absent a due process violation, this court next considers whether relief for excessive post-trial delay is warranted based on the CCA's sentence appropriateness authority under Article 66(d)(1), UCMJ. *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002).

Additionally, pursuant to Article 66(d)(2), UCMJ, a CCA "may provide appropriate relief if the accused demonstrates . . . excessive delay in the processing of the court-martial after the judgment was entered into the record." Because Article 66(d)(2), UCMJ, does not define "excessive delay," "in considering whether a delay is excessive this court will broadly focus on the totality of the circumstances surrounding the post-trial processing timeline for each case, balancing the interplay between factors such as chronology, complexity, and unavailability, as well as the unit's memorialized justifications for any delay." *Winfield*, 83 M.J. at 666. Even if there is excessive delay, "Article 66(d)(2) dictates [that this court] 'may provide appropriate relief' and leaves the determination as to whether relief is provided, and what type of relief is appropriate, to [this court's] discretion." *Id.*

## Argument

The government did not violate appellant's due process rights, because there was no prejudice. Further, considering the totality of the circumstances in this case, appellant deserves no relief under a sentence appropriateness analysis because appellant did not suffer prejudice, his sentence is appropriate, and there is no harm to correct. Furthermore, appellant has not demonstrated error or excessive delay under Article 66(d)(2), UCMJ. Therefore, this court should affirm the findings and sentence as adjudged.

### **A. The first, second, and fourth *Barker* factors weigh in favor of the government.**

From the date appellant's court-martial adjourned to when the case was referred to counsel by this court, 519 days elapsed. (R. at 114; Referral and Designation of Counsel). In overturning *Brown's* 150-day timeline, this court stated that it would "scrutinize even more closely the unit-level explanations for post-trial processing delays between final adjournment and appellate docketing[.]" *Winfield*, 83 M.J. at 665. Based on the OSJA's detailed explanation of the post-trial processing of the case which provided legitimate reasons for the delay, the first and second factors weigh in favor of the Government. *See Winfield*, 83 M.J. at 666.<sup>9</sup> Of note, the OSJA contracted for transcription services; however, the

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<sup>9</sup> Appellant argues that the term in his plea agreement that allowed his record of trial to be served on his defense counsel is prohibited. (Appellant's Brief at 21;

OSJA noted that there were still issues related to the services that did not result in a faster transcription. (Post-Trial Processing Memorandum).

Turning to the fourth *Barker* factor, appellant does not demonstrate that he suffered any prejudice. Therefore, the fourth *Barker* factor weighs in favor of the government.

**B. The third *Barker* factor weighs in favor of appellant.**

Appellant demanded speedy post-trial processing on 23 February 2023. (Speedy Post-Trial Request). Therefore, this factor weighs in favor of appellant.

**C. The delay does not impugn the fairness or integrity of the military justice system.**

Appellant has failed to show that the delay was so egregious as to “adversely affect the public’s perception of the fairness and integrity of the military justice system” and overcome the absence of prejudice. *Toohey*, 63 M.J. at 362. As such, the “difficult and sensitive balancing process” of the facts of this case show that appellant did not suffer a due process violation. *Barker*, 407 U.S. at 533. Even in

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App. Ex. XIV). However, appellant has failed to show how the provision has prejudiced him or prohibited him from exercising his post-trial and appellate rights since his current appellate defense counsel has a copy of the record of trial. Furthermore, appellant informed the military judge that he understood and agreed with the term of his plea agreement. (R. at 53–54). The government would also note that Army Regulation 27-10, para. 5-57(a)(1), and Defense Counsel Assistance Program (DCAP) Form 3.6 (Post-Trial and Appellate Rights), both discuss service of the Record of Trial on defense counsel in lieu of the accused.



cases where a due process violation was found, this court's superior court has found the due process violation to be harmless beyond a reasonable doubt in the absence of *Barker* prejudice. *See United States v. Bush*, 68 M.J. 96, 104 (C.A.A.F. 2009) (holding that seven-year post-trial delay due process violation was harmless beyond a reasonable doubt); *See also United States v. Allende*, 66 M.J. 142, 145 (C.A.A.F. 2008) (holding that appellant did not suffer detriment to his legal position in his appeal as a result of an almost seven year delay between adjournment and completion of appellate review).

**D. Appellant does not merit relief under an Article 66(d)analysis.**

Under the specific facts of this case, the delay was not excessive. If this court finds excessive delay, however, Article 66(d)(2) “dictates [this court] ‘may provide appropriate relief’ and leaves the determination as to whether relief is provided, and what type of relief is appropriate, to [this court’s] discretion.” *Winfield*, 83 M.J. at 666. Appellant asks this court to set aside his sentence, to include his punitive discharge.<sup>10</sup> (Appellant’s Br. 24).

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<sup>10</sup> Appellant specifically asks that his discharge be set aside and argues that his sentence of seventy-five days confinement and a bad-conduct discharge is “inappropriately severe in light of the totality of the circumstances[.]” (Appellant’s Br. 24). However, appellant also asks that the court affirm the concurrent seventy-five days confinement for The Specification of Charge II. (Appellant’s Br. 26).

No relief is appropriate in this case, and setting aside appellant's bad-conduct discharge would be a windfall to appellant considering the nature of the charges to which he pleaded guilty.<sup>11</sup> *Winfield*, 83 M.J. at 666. *See generally United States v. Zarbatany*, 70 M.J. 169, 170 (C.A.A.F. 2011) (pronounced qualitative difference between confinement and punitive discharge). Appellant pleaded guilty to one specification each of dereliction of duty and wrongful use of a controlled substance in violation of Articles 92 and 112a, UCMJ. (STR). Based solely on the specifications appellant pleaded guilty to, he faced a maximum sentence to confinement of five years and three months and a dishonorable

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<sup>11</sup> Appellant cites *Hotaling* to support his argument that the court should consider other post-trial delay cases from the same jurisdiction. (Appellant's Br. 18) (citing *United States v. Hotaling*, ARMY 20190360, 2020 CCA LEXIS 449 (Army Ct. Crim. App. 11 Dec. 2020) ([mem. op.](#))). The circumstances of this case are drastically different from the "unique" circumstances in *Hotaling* to include the nature of the offenses in that case, the SJA's actions post-trial, and the panel in *Hotaling* recognizing setting aside the punitive discharge was "an extreme and drastic remedy" based on the facts "unique to this case." *Id.* at \*9. This court should decide this case based solely on facts in the record, and it should not consider other cases of dilatory post-trial processing that are outside of the record. *See United States v. Jessie*, 79 M.J. 437, 441 (C.A.A.F. 2020) ("*Fagnan* established a clear rule that the CCAs may not consider anything outside of the 'entire record' when reviewing a sentence under [Article 66(d)], UCMJ." (citing *United States v. Fagnan*, 12 U.S.C.M.A. 192, 194; 30 C.M.R. 192, 194 (1961))). Furthermore, the government would note that the following cases that appellant requests the court take judicial notice of are not yet pending decision before the court: *United States v. Hulihan II*, ARMY 20220246; *United States v. Padgett*, ARMY 20220169; *United States v. Goins*, ARMY 20220088; *United States v. Robinson*, ARMY 20230109; *United States v. Cunningham*, ARMY 20220140; and *United States v. Borja*, ARMY 20220303. On 21 February 2024, the appellant in *United States v. Wilson*, ARMY 20220309, withdrew his appeal.


discharge. (R. at 48; *Manual for Courts-Martial, United States*, (2019 ed.), App’x. 12). Appellant’s plea agreement limited appellant’s confinement to a maximum of ninety days confinement, a fraction of the maximum sentence he was facing. (App. Ex. XIV). Furthermore, Appellant’s plea agreement specifically bargained for a bad-conduct discharge, and the military judge sentenced him to the minimum amount of confinement allowed under the plea agreement. (App. Ex. XIV; STR; R. at 113). Any sentence relief is inappropriate in this case. Given the very limited discretion afforded this court in adjudging a sentence and the maximum sentence appellant faced, this court ought to deny appellant the windfall he seeks.<sup>12</sup>

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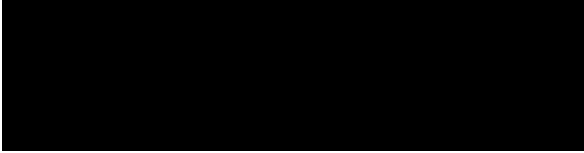
<sup>12</sup> See, e.g., *United States v. Collins*, 44 M.J. 830, 833 (Army Ct. Crim. App. 1996); *United States v. Cannon*, ARMY 20220366, 2024 CCA LEXIS 27, at \*2 (Army Ct. Crim. App. 22 Jan. 2024) ([summ. disp.](#)) (“After reviewing the entire record and considering the totality of the circumstances, we find while there is some delay, the explanation provided by the OSJA, albeit minimal, sufficiently memorialized the competing requirements. As such, we find the sentence appropriate and decline to grant any relief for post-trial processing delay.”).

## **Conclusion**

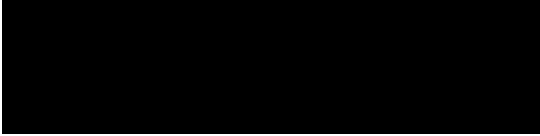
WHEREFORE, the government respectfully requests this Honorable Court affirm the findings and sentence and deny relief.



CHASE C. CLEVELAND  
MAJ, JA  
Branch Chief, Government  
Appellate Division



KALIN P. SCHLUETER  
LTC, JA  
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CHRISTOPHER B. BURGESS  
COL, JA  
Chief, Government Appellate  
Division

**CERTIFICATE OF SERVICE**

**UNITED STATES v. DICKERSON, ARMY 20220118**

I certify that a copy of the foregoing was sent via electronic submission to  
the Defense Appellate Division at [REDACTED]  
[REDACTED] on the \_\_\_\_ day of May, 2024.

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