IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

In Re Sergeant (E-5) **THOMAS M. ADAMS**, United States Army, Petitioner	**PETITION FOR WRIT OF HABEAS CORPUS** Docket No. ARMY MISC _____

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

COMES NOW petitioner, Sergeant Thomas Adams, who petitions this court for a writ of habeas corpus to free him from custody. In light of the decision in *United States v. Guyton*, 82 M.J. 146 (C.A.A.F. 2022), petitioner has a meritorious speedy trial claim that is clear and indisputable. This court's review of petitioner's case under Article 66, Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 866, was prior to *Guyton*. Petitioner's case was later remanded by the Court of Appeals of the Armed Forces [CAAF], and a sentence rehearing was authorized, during which time the CAAF decided *Guyton*. When petitioner's case returned to this court, he re-raised the speedy trial claim error. After ordering further briefing on whether there was jurisdiction given the scope of the CAAF's remand, this court affirmed the findings and sentence without discussion. To the extent petitioner's claim was denied for lack of jurisdiction, this writ provides this court with authority to hear this claim and grant full relief.

Statement of Statutory Jurisdiction

This court has jurisdiction to entertain this writ under the All Writs Act, 28 U.S.C. § 1641. Petitioner remains in custody, and his case not become final under Article 76, UCMJ.

While a Final Court-Martial Order was issued in petitioner's case, this was error. Final orders are issued after completion of the appellate process. Army Reg. 27-10, Legal Services: Military Justice, para. 5-65 (20 Mar. 2024); Rule for Courts-Martial [R.C.M.] 1209. Because the CAAF previously granted review in this "case," *see* 28 U.S.C. § 1259, the appellate process was not complete until a petition for a writ of certiorari to the Supreme Court had been denied or the time to seek such review had expired. R.C.M. 1209(a)(1)(B)(iii); *Chapman v. United States*, 75 M.J. 598, 600 (A.F. Ct. Crim. App. 2016). The Final Court-Martial Order, issued on 17 December 2024, was issued prematurely because petitioner's time to file a writ of certiorari had not expired. (App'x A: Final Court Martial Order). On 21 April 2025, petitioner filed a petition for a writ of certiorari. (App'x B: Cert. Petition.). On 2 June 2025, the Supreme Court denied the petition. (App'x C: Cert. Denial). Because a new Final Court-Martial Order has not issued, petitioner's case is not final, and this court has jurisdiction over this writ.

Statement of the Case

On 5 and 6 November 2018, a military judge sitting as a general court-martial convicted petitioner at a combined rehearing, contrary to his pleas, of one specification of aggravated sexual assault of a child, six specifications of indecent liberties with a child, one specification of indecent acts with a child, one specification of production of child pornography, one specification of sodomy, one specification of aggravated sexual abuse of a child, and one specification of abusive sexual contact with a child, in violation of Articles 120, 125, and 134, UCMJ. (App'x D: Prom. Order). The military judge sentenced petitioner to a reduction to the grade of E-1, total forfeitures, confinement for forty-three years, and a dishonorable discharge. (R. at 2595). On 29 April 2019, the convening authority approved the findings and sentence, crediting petitioner with 2,086 days of credit against his sentence to confinement. (App'x E: Action).

On 13 July 2020, this court dismissed the child pornography production specification. *United States v. Adams*, ARMY 20130693, 2020 CCA LEXIS 232 (Army Ct. Crim. App. 13 Jul. 2020) (mem. op.). This court affirmed all other findings and the sentence. *Id*.

On 9 September 2021, the CAAF set aside Specifications 2, 3, 4, and 5 of Charge II (indecent liberties with a child) and Specification 1 of Charge IV

(sodomy). *United States v. Adams*, 81 M.J. 475, 481 (C.A.A.F. 2021). The CAAF also set aside the sentence. *Id*.

On 13 May 2022, a military judge sitting as a general court-martial sentenced petitioner to a reduction to the grade of E-1, confinement for 260 months, and a dishonorable discharge. (R. at 2690).

On 28 August 2023, petitioner assigned three errors to this court, one of which is the issue presented herein. On 2 November 2023, this court ordered, in part, petitioner to respond to whether there was jurisdiction to hear the issue considering the scope of the CAAF's remand. On 22 January 2024, this court summarily affirmed the findings and sentence. *United States v Adams*, ARMY 20130693, 2024 CCA LEXIS 25 (Army Ct. Crim. App. 22 Jan. 2024).

On 17 October 2024, the CAAF denied further review, and on 22 November 2024, it denied reconsideration. *United States v. Adams*, 85 M.J. 197 (C.A.A.F. 2024), *recon. denied*, 2024 CAAF LEXIS 742 (C.A.A.F. 22 Nov. 2024).

On 14 February 2025, petitioner's deadline to file a writ of certiorari was extended to 21 April 2025. (App'x F: Supreme Court Docket). On 21 April 2025, petitioner filed a writ of certiorari. (App'x B). On 2 June 2025, the Supreme Court denied the petition. (App'x C; also available at *Adams v. United States*, __ S. Ct. __, 2025 U.S. LEXIS 2145 (2 June 2025)).

Statement of Facts

More than one month after the 2017 Charges were referred—and 192 days after preferral—the government arraigned petitioner. The defense moved to dismiss the charges based on the government's failure to arraign petitioner in 120 days in violation of Rule for Courts-Martial [R.C.M.] 707.[1] (App'x G: App. Ex. XXXII).

The military judge denied the motion because he excluded two periods of "delay." He first excluded forty-nine days associated with a defense requested delay. (App'x H: App. Ex. XLVIII).

Next, he excluded post-referral delay, but on this point, he posited two separate "theories." (App. Ex. XLVIII). "Theory 1" reasoned that *all* post-referral delay, totaling thirty-three days, was excludable under then-Rule 1.1 of the Rules of Practice Before Army Courts-Martial (1 Nov. 2013), (App. Ex. XLVIII), which provided that "[a]ny period of delay from the judge's receipt of the referred charges until arraignment is considered pretrial delay approved by the judge per [R.C.M.] 707(c), unless the judge specifies to the contrary." Under "Theory 1," when accounting for the forty-nine days of defense requested delay, 111 days remained. (App. Ex. XLVIII).

[1] The defense also moved to dismiss the charges for violating petitioner's speedy trial rights under Article 10, UCMJ, and the Sixth Amendment. (App. Ex. XXXII).

Alternatively, "Theory 2" excluded twenty-eight days of delay, which represented the time between the military judge's proposed date of August 8th for arraignment and the date of petitioner's arraignment. (App. Ex. XLVIII). Although the defense proposed alternative arraignment dates of "the week of 21 August 2017," the military judge's ruling made no mention as to these dates or that the date thereafter was unworkable. Under this alternative "theory," when accounting for the forty-nine days of defense requested delay, 116 days remained. (App. Ex. XLVIII).

Based on these calculations, the military judge denied petitioner's speedy trial motion. (App. Ex. XLVIII).

Issue Presented

WHETHER THE MILITARY JUDGE VIOLATED PETITIONER'S RIGHTS UNDER R.C.M. 707

Standard of Review

The military judge's denial of a R.C.M. 707 claim is reviewed for an abuse of discretion. *United States v. Thompson*, 46 M.J. 472, 475 (C.A.A.F. 1997). A military judge abuses his discretion if he grants a delay without good cause or if the amount of time is unreasonable under the facts of the case. *Id*.

Law and Argument

A habeas petitioner must show he has a clear and indisputable right to relief. *United States v. LaBella*, 15 M.J. 228 (C.M.A. 1983). Petitioner satisfies this standard.

Rule for Courts-Martial 707 provides that an accused shall be brought to trial within 120 days of the imposition of restraint. R.C.M. 707(a) (2016 ed). An accused is "brought to trial" within the meaning of the rule upon arraignment. R.C.M. 707(b)(1).

The rule lists specific periods of time that are not calculated towards the government's obligation to arraign an accused in 120 days and further provides that "[a]ll other pretrial delays approved by a military judge shall be similarly excluded." "The decision to grant or deny a reasonable delay is a matter within the sole discretion of . . . a military judge . . . *based on the facts and circumstances then and there existing."* R.C.M. 707(c)(1) discussion (emphasis added).

A. The military judge clearly abused his discretion under "Theory 1"

The military judge clearly erred in one of two ways under "Theory 1." He erred by relying on Rule 1.1 because Rule 1.1 itself was inconsistent with R.C.M. 707, and thus, invalid. *See* R.C.M. 108. Alternatively, assuming Rule 1.1 was valid, he erred because he applied Rule 1.1 in a manner inconsistent with R.C.M. 707.

1. Rule 1.1 of the Rules of Practice is inconsistent with R.C.M. 707

In *United States v. Guyton*, the CAAF found "several compelling arguments why Army Rule 1.1 is fundamentally incompatible with the text and the associated discussion of R.C.M. 707." 82 M.J. 146, 152 (C.A.A.F. 2022). For one, R.C.M. 707's text and discussion more than suggests the military judge must affirmatively determine good cause for delay "based on the attendant circumstances *of that particular case*." *Id* (emphasis added). For another, Rule 1.1, plainly applied, would have ostensibly sanctioned any delay, regardless of length or cause.[2] *Id*.

The CAAF ultimately affirmed *Guyton* on other grounds and left open Rule 1.1's validity, *id.* at 153, a decision sharply criticized by Judge Cox, who, in concurrence with the result, would not have waited in doing away with Rule 1.1 altogether. *Id*. at 156-57 (Cox J., concurring, in part, and dissenting, in part). Since then, no case other has picked up where *Guyton* left off.

For the same "compelling arguments" presented in *Guyton*, this court should find that Rule 1.1 was inconsistent with R.C.M. 707. Indeed, Rule 1.1 turned R.C.M. 707 on its head. Rather than require good cause to *exclude* delay, which is the default of R.C.M. 707, Rule 1.1 required good cause to *include* delay. *Guyton*,

[2] While not specifically discussed in *Guyton*, Rule 1.1 permits the government to comply with R.C.M. 707 in circumstances where compliance would otherwise not be possible, such as where the government transmits the charges to the military judge on the 120th day.

82 M.J. at 156-57 (Cox J., concurring, in part, and dissenting, in part) (discussing that the default under Rule 1.1 is "precisely the opposite" of the default under R.C.M. 707).

There are two additional reasons to find Rule 1.1 inconsistent with R.C.M. 707. First, Rule 1.1's accommodation for "judicial delay" did not comport with the history of R.C.M. 707. The Trial Judiciary made the rule "with the understanding that the after referral, the government no longer has control of the docket." *United States v. Hawkins*, 5 M.J. 640, 641 (Army Ct. Crim. App. 2016). But the President was presumably aware of that fact that the government did not control the docket after referral when he implemented R.C.M. 707,[3] and yet, R.C.M. 707 originally excluded "judicial delay" only in "extraordinary circumstance*s*." R.C.M. 707(c)(2) (1984 ed.). While the President later removed this provision as part of an effort to simplify the rule, [4] *see* Exec. Order No. 12767 (Jun. 27, 1991), R.C.M. 707's analysis continued to reference the 1986 American

[3] The responsibility for docketing courts-martial had transitioned to the trial judiciary well before the President implemented R.C.M. 707, *see United States v. Wolzok*, 1 M.J. 125, 127 n.1 (C.M.A. 1975), and at a time when the military conducted approximately more than 7,000 courts-martial annually. *See* Annual Report of the Code Committee on Military Justice (1984). The President was presumably aware of the docketing logistics.

[4] The numerous specified exclusions had been criticized as leading to a "catalog-of-excluded-periods approach." *United States v. Dies*, 45 M.J. 376, 378 (C.A.A.F. 1996).

Bar Association [ABA] standards, which likewise did not exclude "judicial delay" absent extraordinary circumstances,[5] and nothing in the text of the current rule suggests an intent to now exclude "judicial delay" absent extraordinary circumstances. *Cf. United States v. Dies*, 45 M.J. 376, 378 (C.A.A.F. 1996) (finding that, despite the President's deletion of unauthorized absences as a specific excludable period, such absences were still excludable because the Court "s[aw] nothing . . . in the current version of [R.C.M.] 707 that assesses the Government for an accused's absence"). Thus, Rule 1.1 completely ignored this historical framework.

Second, Rule 1.1 was inconsistent with federal practice under the Speedy Trial Act [STA], which military courts have turned to for guidance in interpreting R.C.M. 707. *See e.g.*, *United States v. Leonard*, 21 M.J. 67, 70 (C.M.A. 1985); *Dies*, 45 M.J. at 378. The STA explicitly exempts "general congestion of the court's calendar" as excludable delay except for certain allowances in emergencies. *See* 18 U.S.C. §§ 3161(h)(7), 3174. As the Tenth Circuit observed, "[n]either a congested court calendar nor the press of a judge's other business can excuse delay under the [STA]." *United States v. Andrews*, 790 F.2d 803, 808 (10th Cir. 1986). And even when, as here, a continuance is requested by or with the consent of the

[5] *People v. Runningbear*, 753 P.2d 764, 768 (Col. 1988) (citing ABA Standards for Criminal Justice, Speedy Trial, § 12-2.3(b) (1986)).

defense, and a judge delays the case beyond defense's next availability due to his own limited availability, the additional docket delay is not excluded. *United States v. Johnson*, 990 F.3d 661, 666-69 (8th Cir. 2021); *United States v. Nance*, 666 F.2d 353, 359 (9th Cir. 1982). Thus, the STA makes no accommodations for the fact that government is not in control of the docket.

Since Rule 1.1 was inconsistent with R.C.M. 707, it was a clear abuse of discretion for the military judge to rely on it to exclude delay here. Although this court has previously approved of Rule 1.1 in *Hawkins*, 75 M.J. at 641, *Guyton* undermines that approval.

2. The military judge applied Rule 1.1 inconsistently with R.C.M 707

To the extent Rule 1.1 is permissible, *Guyton* suggested it would only be where the record was "silent." *Guyton*, 82 M.J. at 152. Here, however, the record was not "silent" on delay—petitioner asked to be arraigned on the "week of 21 August 2017," arguably before any R.C.M. 707 violation,[6] and complained of

[6] One possible calculation is that the end of defense's proposed arraignment dates would have constituted day 111. All days between the military judge's receipt of charges and the end of the defense's proposed arraignment dates may arguably be considered excludable delay given delay for the statutory waiting period, *see United States v. Lazauskas*, 62 M.J. 39, 42 (C.A.A.F. 2005), and defense's request to reschedule arraignment following the conclusion of the statutory waiting period. However, defense contended that the government had violated R.C.M. 707 prior to referral. Thus, petitioner does not necessarily concede that calculation here, and he has raised this matter personally.

speedy trial as early as 18 August 2017. *Contrast Guyton*, 82 M.J.at 153. Nonetheless, the government took nearly three additional weeks to arraign petitioner. The military judge offered no explanation for this delay aside from Rule 1.1. This was a clear abuse of discretion even assuming Rule 1.1 is valid. *See id*. at 156 (Cox, J., concurring, in part and dissenting, in part) ("if the military judge relies simply on Army Rule 1.1 to exclude pretrial delay without the explanation . . . the rule operates to reverse the default rule set out in the [MCM].").

B. The military judge clearly abused his discretion under "Theory 2"

The military judge also erred by concluding in the alternative that, regardless of Rule 1.1, twenty-eight days were excludable defense delay post-referral. (App. Ex. XLVIII). According to the military judge, this delay started on the date he proposed to arraign petitioner—a date in which defense had a conflict—and ended on the date of petitioner's arraignment.

Relying on *United States v. McKnight*, 30 M.J. 205 (C.M.A. 1990), the military judge concluded that defense "is not entitled to request a delay until a day certain and then insist the government proceed on that very day." (App. Ex. XLVIII). He further concluded that under *McKnight*, "defense remains accountable for delays occasioned by its initial request." (App. Ex. XLVIII).

The military judge was correct insofar as *McKnight* means the defense remains accountable for delays if the initial request *causes* further delay. In *McKnight*, defense asked the government to postpone a hearing until a time between two dates. *Id*. at 208. Critically, *McKnight* concluded that, while defense could not insist on a specific day, once the investigating officer suggested he could make one of the dates, the court "[saw] no reason why the Government's accountability should not resume on [that day]." *Id*. at 208.

Still, the military judge clearly abused his discretion by failing to make findings as to how defense's initial delay from the proposed start date "occasioned" the remaining delay over the course of the next month. Indeed, petitioner indicated he was ready to proceed shortly after the original proposed date, but there is nothing in the record to suggest why those dates were unworkable or why any date thereafter was unworkable. Ultimately, the "paucity of the record [should have] worked to the detriment of the government, because [it] had the burden of persuasion." *United States v. Burris*, 21 M.J. 140, 144 (C.M.A. 1985); *see also* 10 U.S.C. § 3161(h)(7)(A) ("[n]o such period of delay . . . shall be excludable . . . unless the court sets forth . . . its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.")

In sum, because the military judge could not rely on Rule 1.1, and because there are inadequate findings as to why the defense must account for the *entire* delay after the military judge's proposed date, the day of arraignment occurred after 120 days had elapsed, even if all the delay from referral through the end of defense's proposed alternative arraignment dates is excludable.

C. The remedy is dismissal of the charges

Rule 707 mandates dismissal for a violation of the rule. R.C.M. 707(d). Thus, for a violation of the rule, the remedy is the same on appeal.

Two reasons support this conclusion. First, because the rule mandates dismissal, the practical effect of a R.C.M. 707 violation is that the charges going forward have no legal basis. *Cf. United States v. Reese*, 76 M.J. 297, 301 (C.A.A.F. 2017) (holding that prejudice does not need to be established for violations of R.C.M. 603, which prohibits a major change to a charge after arraignment unless "preferred anew," because the practical effect of a violation is that the charge going forward "has no legal basis."). Thus, Article 59a, UCMJ, is not implicated. *Id*.

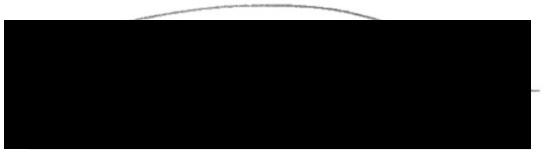
Second, the President modeled R.C.M. 707's remedy provision off of the STA, *Manual for Courts-Martial, United States* (2016 ed.), App'x 21-41, and violations of the time limits under the Act are not subject to harmless error review. *Zedner v. United States*, 547 U.S. 489, 507 (2006). As the Supreme Court found,

harmless error is "hard to square with the Act's categorical terms," *id.* at 508, and that excusing technical errors, which would almost always lead to a finding of harmless error, would be "inconsistent with the strategy the law embodies." *Id*. at 509. Thus, consistent with Article 36, UCMJ, so, too, would the application of harmless error be inconsistent with R.C.M. 707.

Consequently, this court should dismiss the charges against petitioner.

Conclusion

Based on the foregoing, petitioner respectfully requests that this court issue a writ of habeas corpus to free him from custody.



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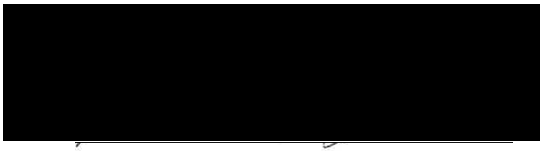
CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically filed with the Army Court and Government Appellate Division on June 13, 2025.



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