IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES Appellee	**BRIEF ON BEHALF OF APPELLANT**
v.	Docket No. ARMY 20250201
Staff Sergeant (E-6) **CARLOS R. ESTRADA,** United States Army, Appellant	Tried at Joint Base Lewis-McChord, Washington, on 17 April 2025, before a general court-martial convened by the Commander, I Corps, Colonel Larry A. Babin, military judge, presiding.

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

Assignments of Error

I. **WHETHER APPELLANT'S THIRTY-FIVE-YEAR SENTENCE IS INAPPROPRIATE BECAUSE IT IS HIGHLY DISPARATE FROM CLOSELY RELATED CASES.**

II. **WHETHER APPELLANT'S THIRTY-FIVE-YEAR SENTENCE IS PLAINLY UNREASONABLE AND, THEREFORE, INAPPROPRIATE.**

Statement of the Case

On 17 April 2025, a military judge sitting as a general court-martial convicted Staff Sergeant Carlos Estrada (appellant), in accordance with his pleas, of three specifications of Article 120b, Uniform Code of Military Justice, 10 U.S.C. § 920b (2018) [UCMJ]. (R. at 23, 101; Statement of Trial Results). The same day, the military judge sentenced appellant to a total of thirty-five years' confinement,

reduction to E-1, and a dishonorable discharge. (R. at 193; Statement of Trial Results).

On 20 May 2025, the convening authority approved the findings and sentence. (Action). On 4 June 2025, the military judge entered judgment. (Judgment). On 22 September 2025, this court docketed appellant's case. (Referral and Designation of Counsel).

Statement of Facts

Pursuant to a plea agreement, appellant pled guilty to Specifications 1, 3, and 6 of Charge I, which involved three different victims. (R. at 23, 43–67; App. Ex. III). Specification 1 concerned appellant touching the genitalia of a girl known to him who was under twelve years old. (R. at 35–64). Specification 3 concerned appellant causing contact between his penis and the mouth of his biological daughter, who also was under twelve years old. (R. at 35–64). Specification 6 concerned appellant causing another biological daughter, who was under sixteen years old, to touch his penis with her hand. (R. at 35–64). The sentencing range under the plea agreement was 240 to 420 months (twenty to thirty-five years' confinement). (R. at 87; App. Ex. III).

During the sentencing phase, the government rested without presenting any aggravation evidence. (R. at 111–18). Next, two witnesses gave unsworn victim impact statements. The unrelated victim stated she had forgiven appellant. (R.

at 124–28). Appellant's wife stated that appellant had generally been a devoted father, noting that he had: (1) read their daughters stories, even recording himself reading books for them to listen to while he was away for trainings; (2) helped with their homework; and (3) attended school events. (R. at 130–32). She also stated that appellant was engaged and generous with others, often volunteering his time to help neighbors, coworkers, and family. (R. at 132). Moreover, appellant's wife stated that, since his arrest, she had seen in appellant "a growing sense of remorse, not only for the legal consequences, but for the deep and irreversible hurt he has caused our daughters, myself, and everyone who trusted him." (R. at 132).

The military judge then admitted into evidence Good Soldier Book materials, including: (1) appellant's enlisted record brief, which shows that he had received twenty-five different awards and decorations, and that his last military occupational specialty (MOS) was as a signals intelligence voice interceptor; (2) appellant's awards and commendations, which included, among other things, four Army Achievement Medals and the Army Good Conduct Medal; and (3) six letters of support for appellant. (R. at 134–39; Def. Ex. A–J).

Three witnesses then testified on behalf of appellant, including appellant's brother, a chaplain who observed appellant while he was in pretrial confinement and described him as a "valuable participant" in programs and activities, and appellant's mother. (R. at 140–56).

Next, appellant made unsworn statements in response to questions by his counsel. (R. at 158–74). Appellant acknowledged the lasting impact that his conduct had had on the victims. (R. at 158). One of the main reasons he had pled guilty was to spare them the agony of having to testify at trial. (R. at 158). He was committed to "doing whatever it takes" to rehabilitate, and had been availing himself of programs offered during his pretrial confinement. (R. at 159).

Upon joining the Army in 2008, appellant picked multichannel transmission systems operator-maintainer as his MOS, and used the money he had earned to help support his mother and siblings. (R. at 161–62). Appellant participated in professional development programs through the Noncommissioned Officer Education System, earned an associate's degree, studied languages at the Defense Language Institute Foreign Language Center, was nearing completion of his bachelor's degree in cybersecurity management in policy, and aspired to obtain a master's degree in cybersecurity. (R. at 163). He planned to avail himself of the rehabilitation services offered to him going forward. (R. at 172).

Appellant then gave an unsworn statement, in which he apologized to the victims. (R. at 173–74). Among other things, he said:

> First, I would like to say that I apologize from the bottom of my heart [to the victims, as] none of you deserve what I put you through. I can't imagine the full scope of the impacts that these actions will have upon your lives and future relationships. My fondest desire is that this trial can at least help to open the way towards healing.

(R. at 173). The defense subsequently rested. (R. at 175).

During its argument, the government asked the military judge to impose the maximum sentence of thirty-five years' confinement. (R. at 178). During its argument, the defense asked the military judge to impose the minimum sentence of twenty years' confinement because, while appellant's conduct was "egregious, heinous, and without excuse": (1) twenty years' confinement was sufficient to serve the interests of justice, "sufficient but not greater than necessary to promote good order and discipline," and sufficient for appellant's full rehabilitation; and (2) appellant would be forever tarnished by his dishonorable discharge after having served sixteen years in uniform. (R. at 185–90). The defense specifically highlighted the following three mitigating factors: (1) appellant's sixteen-year career in the Army and his accomplishments; (2) appellant's acceptance of responsibility and remorse; and (3) appellant's "actions since his placement in pretrial confinement, and his future plans and rehabilitative efforts." (R. at 186–87).

The military judge imposed the maximum sentence of thirty-five years' confinement, reduction to E-1, and a dishonorable discharge, without giving an explanation or reasons for the sentence. (R. at 193).

Standard of Review[1]

Courts of Criminal Appeals (CCAs) review de novo the question of whether a sentence is inappropriate. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law[2]

Under Article 66, a CCA may affirm only "the sentence or such part or amount of the sentence" as it finds "correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018).[3] CCAs may consider "whether the sentence is plainly unreasonable." Article 66(e)(1)(B), UCMJ, 10 U.S.C. § 866(e)(1)(B) (2018).

The Court of Appeals for the Armed Forces (CAAF) noted that Congress saw the need, following World War II, "to provide for an intermediate appellate tribunal that would have the high responsibility of ensuring uniformity and evenhanded-ness, values that could not be assured if final decision making were left at the local command level." *United States v. Boone*, 49 M.J. 187, 191–92 (C.A.A.F. 1998). Congress, therefore, enacted Article 66 "with the purpose of establishing uniformity

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[1] Applies to both Assignment of Error (AE) I and II.

[2] Applies to both AE I and II.

[3] All references to Article 66 reflect the statute language at the time that appellant committed his earliest offense. (*See* R. at 35–64; Charge Sheet). The dates that appellant committed his offenses ranged from 10 August 2019 to 6 November 2024. *Id*.

of sentencing *throughout* the armed forces." *United States v. Henry*, 42 M.J. 231, 234 (C.A.A.F. 1995) (emphasis added).

Article 66 gives CCAs "plenary authority—as well as the responsibility—to affirm the [] sentence of a court-martial within their jurisdiction only if their review of the record convinced them that the determinations reached by the court-martial and the convening authority were [] correct in law and fact." *Boone*, 49 M.J. at 192. Accordingly, Article 66's "sentence appropriateness provision is a sweeping Congressional mandate to ensure a fair and just punishment for *every* accused." *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (internal quotations omitted) (emphasis added). "Sentence appropriateness involves the judicial function of assuring justice is done and that the accused gets no more than the deserved punishment." *United States v. Armsbury*, ARMY 20230534, 2025 CCA LEXIS 149, at *10 (Army Ct. Crim. App. 4 Apr. 2025) (mem. op.), *review granted*, No. 25-0233 (C.A.A.F. 6 Aug. 2025) (internal quotations omitted).

Moreover, CCAs have the authority to set aside all or part of a sentence for cases in which appellants, like the instant case, pled guilty and were sentenced pursuant to a plea agreement. *E.g.*, *Armsbury*, ARMY 20230534, 2025 CCA LEXIS 149 (setting aside the appellant's bad conduct discharge, despite his agreeing to the term as part of his plea agreement).

Assignment of Error I

APPELLANT'S THIRTY-FIVE-YEAR SENTENCE IS INAPPROPRIATE BECAUSE IT IS HIGHLY DISPARATE FROM CLOSELY RELATED CASES.

A. Additional Law Relevant to Error

As part of its Article 66 review for uniformity of sentencing, CCAs have a responsibility to conduct a sentence comparison analysis by considering the results in other cases outside of the record. *United States v. Behunin*, 2022 CCA LEXIS 412, at *24 (A.F. Ct. Crim. App. 18 Jul. 2022) (mem. op.), *aff'd*, 83 M.J. 158 (C.A.A.F. 2023). An appellant must first show that: (1) any cited cases are "closely related" to his case; and (2) the sentences are "highly disparate." *Id*. at *25 (citing *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999)). Upon such a showing, the burden shifts to the government to establish a rational basis for the sentencing disparity. *Id*. at *26. Cases are closely related if: (1) the accused were coactors involved in a common crime; (2) the accused were involved in a common or parallel scheme; or (3) there was "some other direct nexus" between the accused. *United States v. Behunin*, 83 M.J. 158, 162 (C.A.A.F. 2023).

In *Behunin*, the appellant and a senior airman had used drugs together while serving in the Air Force. *Id*. at 159. They were each convicted for independently lying on their Air Force enlistment documents about drug use, and subsequently giving false statements to the U.S. Air Force Office of Special Investigations when

interviewed about their drug use. *Id*. Whereas the appellant was sentenced to confinement and a bad-conduct discharge, the senior airman was not sentenced to any confinement, and did not receive a punitive discharge. *Id*. The appellant claimed, on appeal, that she was entitled to sentencing relief because her case was closely related to the senior airman's case. *Id*. at 159–60. The CAAF found that the Air Force Court of Criminal Appeals (AFCCA) did not abuse its discretion in finding that the cases were not closely related. *Id*. at 160. In analyzing the third basis for determining that cases are closely related, the CAAF stated the following:

> [The] "mere similarity of offenses is not sufficient" for sentence disparity purposes. And here, because Appellant and [the senior airman] were independent actors with respect to their separate fraudulent enlistment and false official statement offenses, it was not an abuse of discretion for the CCA to conclude that there was no "other direct nexus" between these cases.

Id. at 163.

The CAAF has not specifically articulated what constitutes a "direct nexus" between cases, other than a common crime or scheme, to satisfy the third basis for determining whether cases are closely related. Moreover, the CAAF has not expressly defined what constitutes a "highly disparate" sentence.

In *United States v. Griffitts*, the appellant pled guilty to six specifications of child sexual assault, one specification of assault, and one specification of possessing child pornography, in violation of Articles 120, 128, and 134, UCMJ, 10 U.S.C. §§ 920, 928, 934. NMCCA 201000673, 2011 CCA LEXIS 177, at *1 (N.M. Ct.

Crim. App. 20 Oct. 2011). On multiple occasions, the appellant fondled or rubbed the breasts, buttocks, or vaginas of six different girls between the ages of five and sixteen, and he was in possession of child pornography. *Id*. at *11. The Navy-Marine Court of Criminal Appeals affirmed the appellant's sentence of eleven years' confinement, reduction to E-1, and a dishonorable discharge. *Id*. at *1–2.

In *United States v. Hardy*, the appellant pled guilty to two specifications of abusive sexual contact with a child, aggravated sexual abuse of a child, three specifications of indecent liberties with a child, two specifications of abusive sexual contact, sexual abuse of a child, sodomy with a child, conduct unbecoming an officer, communicating indecent language, and engaging in indecent acts with a child, in violation of Articles 120, 120b, 125, 133, and 134, UCMJ, 10 U.S.C. §§ 920, 920b, 925, 933, 934. 76 M.J. 732, 734 (A.F. Ct. Crim. App. 2017). There were two victims. *Id*. The appellant sexually assaulted his biological daughter when she was between the ages of eleven and sixteen years old "by repeatedly causing her to touch his genitalia, repeatedly touching her breasts and genitalia, repeatedly watching pornography and masturbating in her presence, and single instances of ejaculating on her bare chest, engaging in sodomy with her, and communicating indecent language to her." *Id*. The appellant also sexually assaulted his stepdaughter while she was under sixteen years old by fondling her breasts. *Id*. The AFCCA

affirmed appellant's sentence of twelve years' confinement and dismissal. *Id*.

In *United States v. Lekse*, the appellant pled guilty to one specification of attempted rape of a child between twelve and sixteen year old, one specification of engaging in a lewd act with a child on multiple occasions, one specification of improper sexual contact with a child on multiple occasions, one specification of indecent liberties with a child on multiple occasions, three specifications of forcible sodomy with a child, and one specification of committing an indecent act with a child on multiple occasions, in violation of Articles 80, 120, 125, and 134, UCMJ, 10 U.S.C. §§ 880, 920, 925, 934. ACM 37733, 2012 CCA LEXIS 349, at *1–2 (A.F. Ct. Crim. App. 5 Sep. 2012). The appellant began abusing the victim, his adopted daughter, when she was ten years old. *Id*. at *3. "At various times, the appellant would kiss [the victim] on her mouth, breasts, and buttocks and would fondle her breasts and vaginal area. He also forced [the victim] to perform oral sex on him in his bedroom and would occasionally perform oral sex on her." *Id*. The AFCCA affirmed the appellant's sentence of ten years' confinement, reduction to E-1, and a dishonorable discharge. *Id*. at *2.

In *United States v. Patron*, the appellant pled guilty to one specification of attempted rape of a child under twelve years old, one specification of rape of a child under twelve years old, and two specifications of sexual abuse of a child under twelve years old, in violation of Articles 80 and 120b, UCMJ, 10 U.S.C. §§ 880,

920b. ACM 39375, 2019 CCA LEXIS 163, at *1 (A.F. Ct. Crim. App. 11 Apr. 2019). The appellant was specifically convicted of sexually assaulting his half-sister, when she was between seven and nine years old, "by penetrating her vulva with his penis; licking her genitalia with his tongue[]; touching her genitalia, groin, inner thighs, and buttocks with his penis[]; and attempting to penetrate her mouth with his penis." *Id*. at *1–2. The AFCCA affirmed his sentence of ten years' confinement, reduction to E-1, and a dishonorable discharge. *Id*. at *8–9.

In *United States v. Rinehart*, the appellant pled guilty to carnal knowledge, sodomy with a child under sixteen years old, assault consummated by a battery on a child under sixteen years old, and indecent acts with a child under sixteen years old, in violation of Articles 120, 125, 128, and 134, UCMJ, 10 U.S.C. §§ 920, 925, 928, 934. ACM 36548, 2007 CCA LEXIS 130, at *1 (A.F. Ct. Crim. App. 28 Mar. 2007) (per curiam). Specifically, the appellant had sexual intercourse on four separate occasions with a fourteen-year-old girl who he knew, placed his penis in her mouth, and placed his mouth on her vagina. *Id*. at *3. The AFCCA affirmed the appellant's sentence of a ninety-eight-day confinement, reduction to E-1, and a dishonorable discharge. *Id*. at *1–2.

A. Legal Argument

1. Appellant's case is closely related to *Rinehart*, *Lekse*, *Griffitts*, *Hardy*, and *Patron* because there are multiple and significant similarities between them establishing a direct nexus.

There are three separate and distinct bases for finding cases are closely related. It is under the third basis that appellant's case is closely related to *Rinehart*, *Lekse*, *Griffitts*, *Hardy*, and *Patron*. Although appellant and the accused in these cases were not coactors involved in a common crime or scheme, there are multiple other significant similarities between them establishing a direct nexus. All of them were convicted of violating Article 120 and/or Article 120b. All of them were convicted pursuant to guilty pleas. And all of them were convicted of multiple specifications for child sexual assault.

There are other similarities. Like appellant's case, *Griffitts* and *Hardy* involved multiple victims, and *Lekse*, *Hardy*, and *Patron* involved one or more victims related to the accused. The following charts highlight the case similarities:

Case	Offense	Plea	# of Victims	Identity of Victims	# of Assaults	Sex & Other Acts Committed
Estrada	Art. 120b	Guilty	3	• Girl under 12 • Biological daughter under 12 • Biological daughter under 16	Multiple	• Mutual touching of genitalia • Oral sex
[redacted]	Art. 120 Art 128 Art 134	Guilty	6	• Girls 5 to 16	Multiple	• Fondling and rubbing of breasts, buttocks, and vaginas • Possession of child pornography
[redacted]	Art. 120 Art. 120b Art 125 Art 133 Art 134	Guilty	2	• Biological daughter from 11 to 16 • Stepdaughter under 16	Multiple	• Sodomy • Mutual touching of genitalia • Fondling of breasts • Masturbating • Communicating indecent language • Watching pornography
[redacted]	Art 80 Art. 120 Art 125 Art 134	Guilty	1	• 10-yr-old daughter	Multiple	• Mutual oral Sex • Kissing of mouth, breasts, & buttocks • Fondling of breasts & vaginal area
[redacted]	Art 80 Art. 120b	Guilty	1	• Half-sister 7 to 9	Multiple	• Sexual intercourse • Cunnilingus • Touching of genitalia, groin, inner thighs, & buttocks • Attempted oral sex
[redacted]	Art. 120 Art. 125 Art 128 Art 134	Guilty	1	• 14-yr-old girl	Multiple	• Sexual intercourse • Mutual oral sex

Case	*Estrada*	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Art. 120 or 120b Conviction	Yes	Yes	Yes	Yes	Yes	Yes
Guilty Plea	Yes	Yes	Yes	Yes	Yes	Yes
>1 Victim	Yes	Yes	Yes	No	No	No
≥ 1 Victim Related	Yes	No	Yes	Yes	Yes	No
>1 Assault of Children	Yes	Yes	Yes	Yes	Yes	Yes

As shown, there are multiple similarities between the cases: (1) all of the appellants were convicted of violations of Article 120 or 120b; (2) all of the appellants pled guilty; (3) all of the appellants' cases involved more than one victim; (4) all of the appellants' cases involved one or more victims related to the accused;

and/or (5) all of the appellants were convicted of multiple specifications for child sexual assault. The foregoing demonstrates that there are more similarities between the cases than "mere similarity of offenses." *See Behunin*, 83 M.J. at 162. As such, appellant's case is distinguished from *Behunin*, in which there was only one case similarity, being that both of the accused were convicted of violating the same UCMJ offenses.

Notably, the CAAF has not specifically articulated how many and what kind of similarities between cases would be sufficient for establishing a "direct nexus," other than a common crime or scheme, to satisfy the third basis for determining whether cases are closely related. If a common crime or scheme were the only measures of whether cases are closed related, that would render the third basis for establishing that cases are closely related meaningless.[4] Accordingly, there must be other similarities between cases to establish a direct nexus under the third basis. As shown above, there are multiple and significant similarities between appellant's case and [redacted] from which this court could conclude that there is a direct nexus.

[4] *Cf.* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012) ("If possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*). None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." (internal citations omitted)).

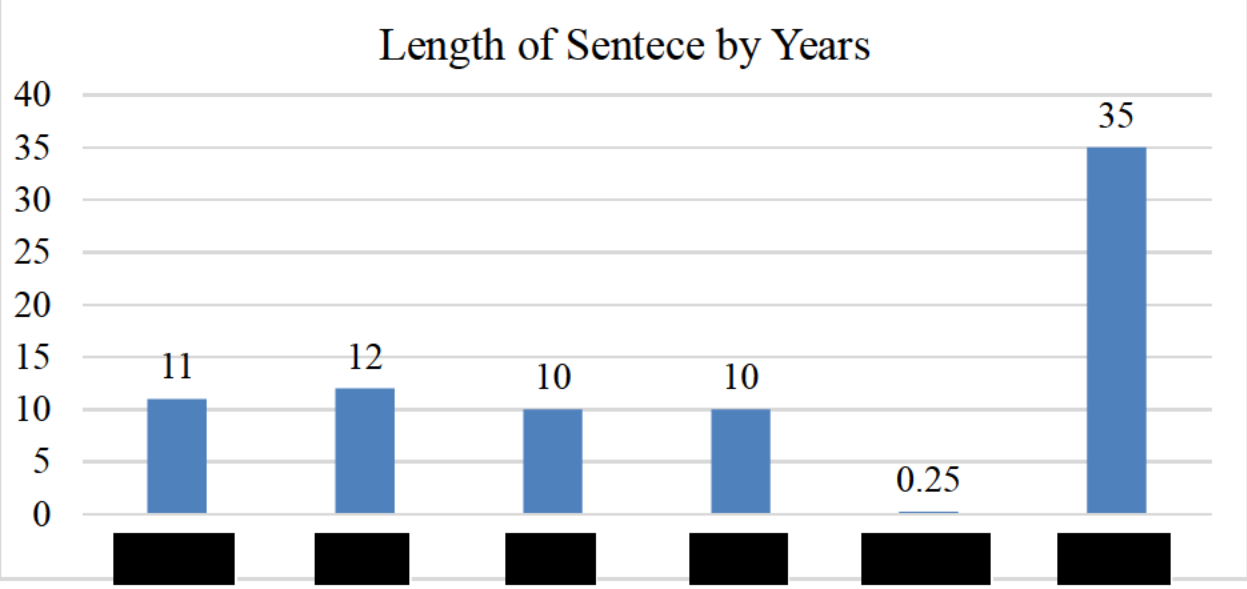
2. Appellant's sentence is highly disparate from [redacted], [redacted] sentences.

Compared to [redacted] sentences, appellant's sentence is highly disparate. [redacted]—whose conduct is arguably more egregious in that he repeatedly engaged in sexual penetration with the victim—was sentenced to *only* ninety-eight days' confinement, whereas appellant was sentenced to *thirty-five years'* confinement. Between [redacted] received the most severe sentence of twelve years' confinement, which is far less than the thirty-five-year sentence imposed for appellant.[5]

The following charts illustrates the sentencing disparity:

[5] A broad search yielded *contested* cases in which an appellant convicted of an Article 120 and/or 120b violation was sentenced to thirty-five or more years' confinement, but no *uncontested* cases with any of the other similarities to the instant matter discussed above in which an appellant pled guilty to an Article 120 and/or 120b violation and was sentenced to thirty-five or more years' confinement.

Case	Offense	Sex & Other Acts Committed	Sentence
Griffitts	Art. 120 Art 128 Art 134	• Fondling and rubbing of breasts, buttocks, and vaginas • Possession of child pornography	11 years
[redacted]	Art. 120 Art. 120b Art 125 Art 133 Art 134	• Sodomy • Mutual touching of genitalia • Fondling of breasts • Masturbating • Communicating indecent language • Watching pornography	12 years
[redacted]	Art 80 Art. 120 Art 125 Art 134	• Mutual oral Sex • Kissing of mouth, breasts, & buttocks • Fondling of breasts & vaginal area	10 years
[redacted]	Art 80 Art. 120b	• Sexual intercourse • Cunnilingus • Touching of genitalia, groin, inner thighs, & buttocks • Attempted oral sex	10 years
[redacted]	Art. 120 Art. 125 Art 128 Art 134	• Sexual intercourse • Mutual oral sex	98 days
[redacted]	Art. 120b	• Mutual touching of genitalia • Oral sex	35 years



Notably, both appellant and [redacted] were convicted, following a guilty plea, of multiple specifications for child sexual assault, involving multiple victims—including two daughters in each case—in violation of Article 120b. Thus, there are five material similarities between appellant's case and [redacted], yet appellant's thirty-five-year sentence was twenty-three years longer than [redacted] twelve-year sentence. Although heinous and egregious, appellant's conduct was no more heinous or egregious than Hardy's conduct—or the conduct of [redacted], [redacted]—to justify a more than two-decade-longer sentence.

Moreover, the fact that appellant's sentence is more than two decades longer even though he was convicted of violating only one UCMJ article, while [redacted] were convicted of violating multiple UCMJ articles, further shows that his sentence is highly disparate.

In sum, appellant's sentence is highly disparate to closely related cases and, therefore, inappropriate. Even though the military judge imposed a sentence agreed to by the parties, that does not obviate this court's responsibility to ensure a fair and just punishment for *every* accused, *see Baier*, 60 M.J. at 384, and uniformity of sentencing *throughout* the armed forces, *see Henry*, 42 M.J. at 234.

Assignment of Error II

APPELLANT'S THIRTY-FIVE-YEAR SENTENCE IS PLAINLY UNREASONABLE AND, THEREFORE, INAPPROPRIATE.

A. Additional Law Relevant to Error

There are multiple ways that a sentence can be inappropriate. The *Lacy* test, *see supra* AE I, is just one. *See United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (explaining that sentence comparison is only one of many aspects of sentence appropriateness review); *United States v. Martinez*, 76 M.J. 837, 841–42 (C.M.A. 1988) (noting that many other factors are considered as part of a sentence appropriateness review, including, but not limited to: "sentence severity; the entire record of trial; appellant's character and military service; and the nature, seriousness, facts, and circumstances of the criminal course of conduct").

In *Armsbury*, for instance, appellant pled guilty and was sentenced to a bad conduct discharge, pursuant to his plea agreement. ARMY 20230534, 2025 CCA LEXIS 149, at *1. This court found that appellant's discharge was inappropriate on the basis that: (1) it was highly disparate from closely related cases; *and* (2) in light of, among other things, the length of his military service, acceptance of responsibility, and lack of aggravation evidence at sentencing. *Id*. at *7, *11. Under Rule for Courts-Martial [R.C.M.] 1002, a sentence must be "sufficient, but not greater than necessary, to promote justice and to maintain good order and

discipline." R.C.M. 1002(c). The sentence must take into consideration, among other things, just punishment, adequate deterrence, the need to protect others, and rehabilitation of the accused. *Id*.

Moreover, Article 66 leaves open the door to finding sentences inappropriate when compared to other cases even if they are not closely related. *See, e.g.*, *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) ("In making a sentence appropriateness determination, [CCAs] are required to examine sentences in closely related cases and permitted, but not required, to do so in other cases."); *Behunin*, 2022 CCA LEXIS 412, at *25 (explaining that CCAs are "not constrained to specifically limit its comparison of sentences to closely related cases").

B. Legal Argument

Mitigating evidence, and a comparison with similar cases, show that appellant's thirty-five-year sentence is plainly unreasonable and, therefore, inappropriate. Even if [redacted] are not closely related to appellant's case, there are multiple and significant similarities between them, and appellant's conduct was no more heinous or egregious to justify a more than two-decade-longer sentence. *See supra* AE I. That is grossly disproportionate.

Moreover, appellant's sentence was unduly harsh in light of the mitigating evidence. Appellant accepted responsibility for his actions by pleading guilty, apologized and expressed genuine remorse to the victims, and expressed his intent

to avail himself of rehabilitation services offered him going forward. (*See* R. at 23, 158–59, 172–74). His educational background (having attained an associate's degree and nearly a bachelor's degree), and the multiple awards, commendations, decorations, and recognitions that he had received throughout his sixteen-year Army career (twenty-five altogether), demonstrate that he is highly driven and, therefore, more likely to reform. (*See* R. at 159–63; Def. Ex. A–F). In addition, appellant had six letters of support, and three witnesses testified on his behalf, including a chaplain, who described appellant as a "valuable participant" in programs and activities while in pretrial confinement, which further demonstrates his rehabilitation potential. (*See* R. at 140–56; Def. Ex. G, I). Also significant, the unrelated victim said that she had forgiven appellant, and appellant's wife said that appellant had generally been a devoted father, was engaged and generous with others, and appeared remorseful for his conduct. (*See* R. at 128, 132).

Because the military judge did not give an explanation or reasons for the sentence that he imposed, it is unclear to what extent, if any, that he considered the mitigating evidence. (*See* R. at 193). If assuring justice is done, and that appellant gets no more than the deserved punishment, it seems rather arbitrary that the military judge imposed the maximum sentence when the difference between the low and high end of the sentencing range of twenty to thirty-five years' confinement was fifteen years. *See* R.C.M. 1002(c).

In sum, appellant's sentence is plainly unreasonable and, therefore, inappropriate. While the military judge imposed a sentence agreed to by the parties, that does not obviate this court's responsibility to ensure a fair and just punishment for *every* accused, *see Baier*, 60 M.J. at 384, and uniformity of sentencing *throughout* the armed forces, *see Henry*, 42 M.J. at 234.

Conclusion

Appellant's thirty-five-year sentence is inappropriate. Accordingly, this court should exercise its plenary authority to ensure uniformity in sentencing by setting it aside and resentencing appellant to twenty years' confinement, in accordance with the defense's request below. That would negate the need for a rehearing.

[redacted]

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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 February 4, 2026.

[redacted]
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