IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

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| UNITED STATES | Appellee | **BRIEF ON BEHALF OF APPELLANT** |
| v. | | Docket No. ARMY 20250435 |
| Staff Sergeant (E-6)<br>**BRIKAEL T. TRUSS,**<br>United States Army, | Appellant | Tried at Kaiserslautern, Germany, on 2 September 2025, before a special court-martial convened by the Commander, 21st Theater Sustainment Command, Lieutenant Colonel Jordan C. Stapley, military judge, presiding. |

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

The first undersigned appellate defense counsel attests he has, on behalf of appellant, carefully examined the record of trial in this case.[1] Appellant does not admit the findings and sentence are correct in law and fact, and submits the case to this court on its merits with no specific assignments of error.[2]

[redacted]
Eli M. Creighton
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division

[redacted]
Kelsey Mowatt-Larssen
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[1] The Entry of Judgment contains multiple errors and appellant requests this court take action to correct the following:
1) the convening command should be 21st TSC (Block 6);
2) the court-martial forum should be a SPCM (Block 7); and
3) the ACCA Case Number should be 20250435.

[2] Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), appellant respectfully requests this court consider the information provided in the Appendix.

**Panel 2**

# APPENDIX

## Appendix: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant, through appellate defense counsel, personally requests that this court consider the following matters:

### I. WHETHER THE CONVENING AUTHORITY'S DILATORY PROCESSING OF DEFENSE'S REQUEST FOR DEFERMENT OF RANK REDUCTION AND WAIVER OF AUTOMATIC FORFEITURES—WHICH RESULTED IN A CONSTRUCTIVE DENIAL OF THE REQUEST—WAS PREJUDICIAL ERROR.

### Relevant Facts

Though the parties struck the section prior to signing, Paragraph 7.f. of the plea agreement originally bound the convening authority to defer and then waive automatic forfeitures pursuant to Rule for Courts-Martial (R.C.M.) 1103. (Plea Agreement). The reason it was struck was because the Office of the Special Counsel averred it could not bind the convening authority to such a provision. (R. at 82–83). However, the Government was on notice the deferment request would be made. (R. at 82–83).

On 3 September 2025, one day after the adjournment of appellant's court-martial, defense counsel submitted a request for deferment of rank reduction and waiver of automatic forfeitures pursuant to R.C.M. 1103(b) and 1103(h). (1103 Request). Defense provided analysis and reasoning why the Convening Authority should approve the request. (1103 Request, p. 1–3).

The Convening Authority did not act – whether to approve or deny – on defense's request. Therefore, no written decision was issued. On 3 October 2025, appellant submitted matters pursuant to R.C.M. 1106. (1106 Matters). He requested, *inter alia,* the Convening Authority reconsider the 1103 requests. Appellant alleged the Convening Authority abused his discretion by failing to respond to appellant's original requests from September and this failure prejudiced "the rights of the accused to petition for redress, adequately provide for his family, and present a timelier clemency petition (due to waiting for the Convening Authority's decision)." (1106 Matters, p. 2).

Over a month and a half after appellant's initial R.C.M. 1103 request, the Staff Judge Advocate finally provided his clemency advice to the Convening Authority. (SJA Advice). The SJA Advice noted that appellant had made the prior deferment requests, but provided no notes or discussion about the submitted matters.

On 21 October 2025, the Convening Authority approved the sentence and findings. (Action). The Convening Authority disapproved appellant's request for deferment of reduction and waiver of automatic forfeitures. (Action). He did not include written reasons for the denial.

## Standard of Review

This court reviews a "convening authority's decision to deny a request for deferment of punishment under an abuse of discretion standard." *United States v. Zimmer*, 56 M.J. 869, 873 (Army Ct. Crim. App. 2002); Rule for Courts-Martial 1103(d)(2).

## Law

Rule for Court-Martial [R.C.M.] 1102(a)(1) provides that, in general, a sentence is executed and takes effect when the judgment is entered into the record. However, "unless deferred under R.C.M. 1103…that part of an adjudged sentence that includes reduction in enlisted grade shall take effect…14 days after the sentence is announced under R.C.M. 1007." R.C.M. 1102(b)(6)(A)(i).

The convening authority retains the right, in certain courts-martial, to defer adjudged rank reduction on request of the accused. R.C.M. 1103(a)(1). As such, the convening authority may, "upon written application of the accused, at any time after the adjournment of the court-martial and before the entry of judgment, defer the accused's…reduction in grade." R.C.M. 1103(b). Should the accused make such a request, he has the burden of showing the "interests of the accused and the community in deferral outweigh the community's interests in imposition of the punishment." R.C.M. 1103(d)(2); *see also* Art. 58b, UCMJ. The convening authority may also waive forfeitures that result from a sentence to confinement

"for the purpose of providing support to the accused's dependent." R.C.M. 1103(h).

Importantly, if the accused makes such a written request, "The action of the authority acting on the deferment request shall be in writing." R.C.M. 1103(d). A lack of action on such a written request acts as a constructive denial. *See generally United States v. Brooks*, 2017 CCA LEXIS 387 (Army. Ct. Crim. App. 1 Jun 2017) (finding error when the convening authority failed to respond to the accused's request). In *Zimmer*, this court found error when the convening authority failed to place any reasoning for his denial in writing or in the record. 56 M.J. at 874. It was also error when the Staff Judge Advocate failed to provide guidance or even comment on the deferral request. *Id*. This court held that a summary denial of an accused's written request for deferment was an abuse of discretion. *Id*.

**Argument**

The convening authority abused his discretion when he failed to address, in writing, appellant's request for deferment of the rank reduction and waiver of automatic forfeitures. This court should set aside appellant's rank reduction as an appropriate remedy.

Appellant made a timely and proper request for deferment of rank reduction and waiver of automatic forfeitures—merely one day after adjournment—in accordance with R.C.M. 1102 and 1103. (1103 Request). However, this request

was not acted on for over a month and a half, well after the rank reduction had already been effectuated and appellant had begun serving his confinement sentence. This was prejudicial error.

Appellant's request provided cogent and thoughtful reasons why the deferment was in his and the community's interests. (Deferment Request). It laid out in detail why the rank reduction and waiver of automatic forfeitures would provide needed benefit to appellant's dependent spouse, who was reliant on appellant's income. Both the rank reduction and forfeitures meant appellant's spouse stood to lose thousands of dollars a month sans the merciful act of the convening authority. Therefore, the constructive denial—done a month and a half later without reasoning—prejudiced appellant. The loss of income due to rank reduction and the automatic forfeitures meant his spouse lost the support that R.C.M. 1103(h) means to protect.

This abuse of discretion warrants relief and this court should set aside appellant's punitive discharge.

**II. WHETHER IT WAS ERROR THAT WITNESSES WERE ALLOWED TO READ FROM PREPARED REMARKS.**

**III. WHETHER SERGEANT ET, THE ALLEGED VICTIM, PROVIDED FALSE INFORMATION BECAUSE SHE WAS FACING INVESTIGATION INTO HER OWN ALCOHOL-RELATED MISCONDUCT.**

## CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on July 1, 2026.

[redacted]

**MICHELLE L.W. SURRATT**
**Paralegal Specialist**
**Defense Appellate Division**
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