

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeal
Tenth Circuit

December 5, 2023

Christopher M. Wolpert
Clerk of Court

SEAN A. GRAY,

Petitioner - Appellant,

v.

KEVIN PAYNE, Commandant, United
States Disciplinary Barracks,

Respondent - Appellee.

No. 23-3079
(D.C. No. 5:23-CV-03006-JWL)
(D. Kan.)

ORDER AND JUDGMENT*

Before **PHILLIPS, KELLY**, and **McHUGH**, Circuit Judges.

Petitioner-Appellant Sean Gray was an active-duty member of the United States Army. But after he pled guilty to sexually assaulting his adopted stepdaughter and related crimes, he was dishonorably discharged and sentenced to 44 years' confinement. Gray filed for postconviction relief under 28 U.S.C. § 2241, challenging his court-martial convictions and sentence on ineffective-assistance-of-

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

counsel grounds. The district court denied his petition, so he filed this appeal. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's judgment.

I. Background

In 2018, Gray pled guilty to multiple violations of the Uniform Code of Military Justice, including sexual assault of a child, sexual assault, sexual assault consummated by battery, assault, prejudice to good order and discipline, and failure to obey an order. The victim—his adopted stepdaughter—was between the ages of 13 and 16 when Gray sexually assaulted her. At age 16, she gave birth to Gray's biological daughter, as confirmed by DNA testing.

In exchange for Gray's plea, the Army agreed to dismiss without prejudice the remaining charges, which included rape of a child, sexual abuse, and additional sexual-assault and assault charges. Those charges related to another adopted stepdaughter and the victim's mother. A military judge sentenced Gray to a reduction in rank, 44 years' confinement, and a dishonorable discharge with forfeiture of all pay and allowances. He is confined in the United States Disciplinary Barracks ("USDB") at Fort Leavenworth, Kansas.

Gray appealed to the United States Army Court of Criminal Appeals ("ACCA"), arguing his defense counsel provided ineffective assistance in violation of the Sixth Amendment by advising him to plead guilty to offenses he did not commit, to agree to an incorrect stipulation of facts, and to lie during his providence inquiry with the military judge. In a shift from his previous statements, he insisted

the sex with the victim was consensual and occurred only after her sixteenth birthday. The ACCA ordered his defense counsel to respond, and they provided lengthy affidavits describing their representation. Gray also submitted affidavits, and he requested a fact-finding hearing to resolve disputed questions of fact relating to his legal representation. The ACCA deemed a hearing unnecessary, rejected Gray's argument, and affirmed his conviction and sentence. *See* R.¹ at 102 ("find[ing] no unethical behavior on the part of the defense counsel and conclud[ing] their representation was not ineffective").

The United States Court of Appeals for the Armed Forces ("CAAF") denied his petition for review of the ACCA's decision. That denial concluded his direct appeal and left him with only a "narrowly circumscribed" ability to seek collateral review, *Santucci v. Commandant, U.S. Disciplinary Barracks*, 66 F.4th 844, 853 (10th Cir. 2023).²

In 2023, Gray filed the § 2241 habeas petition underlying this appeal in the United States District Court for the District of Kansas. His petition was based on the same ineffective-assistance claim that he raised in his military-court appeal. Before briefing was complete, he filed an opposed discovery motion seeking a transcript of a

¹ The record on appeal contains multiple sets of page numbers. All citations refer to the blue numbers.

² "Congress . . . has largely exempted the court-martial from direct Article III review." *Santucci*, 66 F.4th at 853. *Santucci* provides a helpful explanation of the process by which a servicemember can appeal a conviction within the military justice system, *id.* at 848 n.3, and the history behind the limited collateral review available in federal court, *id.* at 853-59.

phone call between another USDB inmate and the victim. During that call, the victim supposedly told the inmate that she did not want to testify but her mother made her do so. The district court denied the § 2241 petition on the ground that Gray failed to show the military justice system had failed to give full and fair consideration to his claim. It also denied Gray's discovery motion. This timely appeal followed.

II. Analysis

A. Reviewability and Standard of Review for Military Habeas Petitions

"Federal courts are empowered under 28 U.S.C. § 2241 to entertain habeas petitions from military prisoners. But our review of court-martial proceedings is very limited." *Santucci*, 66 F.4th at 853 (internal quotation marks omitted); *see also id.* (describing the standard of review as "deferential" and noting that "the deference we give to military tribunals is even greater than that we owe to state courts" (internal quotation marks omitted)).

To determine whether merits review of a military habeas corpus petition is appropriate, we consider four factors as articulated in *Dodson v. Zelez*, 917 F.2d 1250, 1252-53 (10th Cir. 1990):

1. "The asserted error must be of substantial constitutional dimension." *Id.* at 1252 (italics and internal quotation marks omitted).
2. "The issue must be one of law rather than of disputed fact already determined by the military tribunals." *Id.* (italics and internal quotation marks omitted).
3. There must be no "[m]ilitary considerations [that] warrant different treatment of constitutional claims." *Id.* at 1252-53 (italics and internal quotation marks omitted).

4. “The military courts must give adequate consideration to the issues involved and apply proper legal standards.” *Id.* at 1253 (italics and internal quotation marks omitted).

The fourth factor is “the most important.” *Santucci*, 66 F.4th at 858 (internal quotation marks omitted).

In *Santucci*, we clarified that “as a necessary condition for full merits review of a given claim, a petitioner must demonstrate that the resolution of *each* of the *Dodson* factors weighs in the petitioner’s favor.” *Id.* at 859 (emphasis added). Only then can a petitioner “show that the military tribunals have *not* given full and fair consideration to [his] claim.” *Id.*

The district court concluded that Gray had not shown he could satisfy all four *Dodson* factors. It focused on the second and fourth factors and, finding them lacking, declined to reach the merits of his habeas petition. We review the district court’s denial of habeas relief de novo. *Id.* at 871.

B. The Second *Dodson* Factor

We start by assessing whether Gray’s ineffective-assistance claim presents only a question of law. The district court concluded it does not—reasoning that the ACCA reviewed multiple conflicting fact-based affidavits and “applied fact-based factors in holding that a hearing was not required to resolve those issues of fact.” R. at 1154. We agree.

Gray's argument on the second *Dodson* factor is hard to decipher.³ He seems to be saying the district court should not even have applied this factor to his claim because an ineffective-assistance claim presents a mixed question of law and fact under *Strickland v Washington*, 466 U.S. 668, 698 (1984). But his acknowledgment that the *Strickland* standard is "in direct contradiction to the second *Dodson* factor," Aplt. Br. at 7, amounts to a concession that this factor cannot weigh in his favor. After all, it would be illogical to say that an issue reviewable under a mixed-question standard is purely "one of law," *Dodson*, 917 F.2d at 1252 (italics and internal quotation marks omitted), unless no issues of disputed fact exist. Although Gray now insists that is the case, he told both the ACCA and the CAAF that disputed facts exist and that the factual disparity between his affidavits and his defense counsel's affidavits was "outcome determinative." See R. at 56-57, 60, 165. And he told the ACCA that a hearing was required because "disputed questions of fact [were] introduced by conflicting post-trial affidavits." R. at 110 (capitalization standardized).

Gray also says that applying the second *Dodson* factor "to [ineffective-assistance] cases brought forth in habeas petitions by military prisoners

³ Because Gray proceeds pro se, we liberally construe his pleadings and his appeal brief. See *Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 (10th Cir. 2003). But we do not act as his advocate. See *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

is, in effect, a bar to habeas and thus unconstitutional,” Aplt. Br. at 9. But he presents no support for this novel argument.

Under these circumstances, Gray has not demonstrated the second *Dodson* factor weighs in his favor. Our analysis could begin and end here, given that his failure to satisfy even one factor is fatal under *Santucci*. Nevertheless, we will consider his argument on the fourth, and most important, *Dodson* factor, to reassure him that he has received full and fair consideration in this court as well.

C. The Fourth *Dodson* Factor

The district court found that the military courts adequately considered Gray’s ineffective-assistance claim. It highlighted the ACCA’s efforts to supplement the record by requesting affidavits from Gray’s counsel and concluded that the ACCA’s opinion shows that it rejected the claim only after a complete record analysis—thus giving full and fair consideration to his claim. Here, too, we agree.

Gray’s arguments on the fourth *Dodson* factor rest on two inconsequential omissions in the district court’s ruling. First, he faults the district court for not addressing the ACCA’s failure to properly cite the affidavits, “which showed clear negligence in their analysis of the affidavits and therefore a lack of adequate consideration,” Aplt. Br. at 5. Second, he faults the district court for not specifically addressing the CAAF’s rejection of the petition for grant of review, even though it did speak broadly of “the military courts,” R. at 1155. Gray might be conflating adequate consideration by the district court with adequate consideration by the military court. In any event, our independent record review shows the military courts

adequately considered⁴ Gray's ineffective-assistance claim and applied proper legal standards. Gray has not demonstrated the fourth *Dodson* factor weighs in his favor.

D. Discovery and Procedural Motions

Last, we turn to Gray's argument that the district court abused its discretion in denying his motions for discovery and for an extension of time and in delaying its ruling on those motions until it resolved his habeas petition. "We review pretrial discovery rulings for abuse of discretion." *King v. PA Consulting Grp., Inc.*, 485 F.3d 577, 590 (10th Cir. 2007). "District courts are properly granted broad discretion over discovery and scheduling matters; otherwise, they would be unable to effectively manage their caseloads." *Id.* at 591. Likewise, we review a district court's denial of a motion for an extension of time for abuse of discretion. *Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.3d 1238, 1242 (10th Cir. 2010).

As Gray recognized in district court, *see* Suppl. R. at 4, habeas petitioners are not entitled to discovery as a matter of ordinary course. *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Instead, a district court has discretion to permit discovery upon a showing of good cause. *See id.* Good cause is established where "the petitioner may,

⁴ The district court used the phrase "full and fair consideration" when discussing the fourth *Dodson* factor. *See* R. at 1155. Gray says the district court erred by using this phrase because the fourth factor references "adequate consideration." *See* Aplt. Br. at 11. We discern no meaningful error. The district court clearly assessed the adequacy of the military courts' consideration. Moreover, the aim of the *Dodson* test as a whole is to assess whether the military courts gave full and fair consideration, so that phrasing is appropriate too.

if the facts are fully developed, be able to demonstrate that he is entitled to relief.”

Id. at 909 (ellipsis and internal quotation marks omitted).

Gray’s discovery motion sought a transcript of a phone call between another USDB inmate and the victim, during which the victim supposedly told the inmate that she did not want to testify but her mother made her do so. The district court found that he had not shown good cause for discovery because (1) “the alleged statement by the victim does not suggest that petitioner did not commit the crime,” and (2) “the facts at issue in the discovery request do not bear on the *Dodson* factors that preclude . . . merits review.” R. at 1156.

On appeal, Gray asserts that the transcript would support his ineffective-assistance claim because his attorneys would not have advised him to plead guilty had they recognized the victim’s motive to fabricate and done their job effectively. But even assuming that statement is true, the district court correctly reasoned that the requested discovery has no relationship to any of the *Dodson* factors. Gray disagrees with the notion that a court must base its discovery ruling on whether the facts sought in discovery “bear on issues barring the court’s review of the merits of the case.” Aplt. Br. at 15. But whether the district court could review the merits of Gray’s case was a threshold question, and it is axiomatic that discovery must be relevant or calculated to lead to the discovery of relevant evidence. Therefore, the district court did not abuse its discretion in denying the discovery motion.

Gray also sought an extension of time to file a traverse (i.e., a reply) in support of his habeas petition. He had filed a reply, but he wanted an opportunity to alter it

after the district court issued its discovery ruling. Having denied the habeas petition and the motion for discovery, the district court logically denied the motion for an extension as moot and thus did not abuse its discretion.

III. Conclusion

We affirm the judgment of the district court. We grant Gray's motion for leave to proceed on appeal without prepayment of costs or fees.

Entered for the Court

Gregory A. Phillips
Circuit Judge

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 24, 2024

Christopher M. Wolpert
Clerk of Court

SEAN A. GRAY,

Petitioner - Appellant,

v.

KEVIN PAYNE, Commandant, United
States Disciplinary Barracks,

Respondent - Appellee.

No. 23-3079
(D.C. No. 5:23-CV-03006-JWL)
(D. Kan.)

ORDER

Before **PHILLIPS, KELLY**, and **McHUGH**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SEAN A. GRAY,

Petitioner,

v.

KEVIN PAYNE, Commandant,
United States Disciplinary Barracks,

Respondent.

Case No. 23-3006-JWL

MEMORANDUM AND ORDER

Petitioner, a military prisoner, has filed a petition for habeas corpus under 28 U.S.C. § 2241, in which he challenges his convictions by court martial. For the reasons set forth below, the Court **denies** the petition. In addition, petitioner's motion for discovery (Doc. # 6) is hereby **denied**, and his motion for an extension of time to file his traverse (Doc. # 12) is **denied as moot**.

Petitioner was convicted after pleading guilty to various offenses related to his alleged sexual assault of his step-daughter. The United States Army Court of Criminal Appeals (ACCA) affirmed petitioner's convictions and sentence, and the Court of Appeals for the Armed Forces (CAAF) denied review of that decision. *See United States v. Gray*, 2019 WL 5604452 (A.C.C.A. Oct. 28, 2019) (unpub. op.), *rev. denied*, 80 M.J. 169 (C.A.A.F. 2020). The ACCA addressed and rejected petitioner's claim on appeal that his defense counsel had been ineffective, in violation of the Sixth Amendment, because they

advised petitioner to plead guilty to offenses he did not commit and to agree to an incorrect stipulation of facts as a part of that plea. *See id.* at *4.

By his present petition, petitioner brings a single claim, as follows: “Petitioner’s defense team was ineffective leading up to and at trial in that they advised him to lie in the stipulation of fact and during his providence inquiry in order to receive a plea agreement from the government.” As supporting facts, petitioner states that defense counsel “believed petitioner was innocent of the charges against him;” “planned [with petitioner] on a contested trial for a year and a half leading up to the trial;” “failed to uncover motive to fabricate for the main complaining witness;” “knew that petitioner would be lying in the stipulation of fact and providence inquiry;” and “continued to advice [*sic*] petitioner that he would face steeper sentencing if he contended the trial.”

Only a week ago, the Tenth Circuit clarified the standard for a district court’s consideration of a habeas petition filed by a military prisoner convicted by a court martial. *See Santucci v. Commandant*, __ F.4th __, 2023 WL 3070683, at *7-22 (10th Cir. Apr. 25, 2023). Other than questions of jurisdiction, a district court may consider the merits upon habeas review only if “the military justice system has failed to give full and fair consideration to the petitioner’s claims.” *See id.* at 10 (citing *Burns v. Wilson*, 346 U.S. 137, 142 (1953)). A court determines whether such full and fair consideration has been given by examining the following four factors:

1. The asserted error must be of substantial constitutional dimension.
2. The issue must be one of law rather than of disputed fact already determined by the military tribunals.
3. Military consideration may warrant different treatment of constitutional claims.
4. The military courts must give adequate consideration to the issues involved and apply proper legal standards.

See id. (quoting *Dodson v. Zelez*, 917 F.2d 1250, 1252-53 (10th Cir. 1990)). Military petitioners must establish that all four factors weigh in their favor in order to have the merits of their claims reviewed. *See id.* at *11. “Putting the matter differently, petitioners’ failure to show that even one factor weighs in their favor is fatal to their efforts to secure full merits review.” *See id.* at *12. “[T]his is especially so, when the factor in question is one that [the Tenth Circuit has] described as ‘the most important,’ that is, the fourth, adequate-consideration factor.” *See id.* (quoting *Thomas v. U.S. Disciplinary Barracks*, 625 F.3d 667, 671 (10th Cir. 2010)).

Petitioner has not shown that he can satisfy this standard with respect to all four factors. First, the Court disagrees with petitioner that his claim presents only a question of law concerning whether a trial counsel’s advising a client to lie to plead guilty pursuant to a plea agreement or coercing the client to do so constitutes ineffective assistance of counsel. Petitioner and his defense counsel submitted affidavits to the ACCA, and petitioner’s allegations concerning statements made to him by counsel were directly contradicted by counsel. The ACCA then applied fact-based factors in holding that a hearing was not required to resolve those issues of fact. *See Gray*, 2019 WL 5604452, at *4-6. The court reviewed the factual record, found that petitioner’s allegations were improbable based on that record, and noted that petitioner’s credibility had been damaged by occasions in which he had made false statements that he was later forced to retract when confronted with physical evidence. *See id.* at *5. To prove his claim of ineffective assistance of counsel, petitioner would be required to show that his counsel’s performance was deficient based on counsel’s conduct, and the facts concerning that conduct are not undisputed. In his

traverse, petitioner appears to change his claim, arguing that even if counsel did not advise him to lie, they coerced him by telling him not to lie while also stating that he would be better off pleading guilty to offenses they knew he did not commit. Such a claim, however, would turn on factual issues concerning the manner in which counsel made those statements and their belief concerning petitioner's guilt. Accordingly, the Court concludes that petitioner's claim does not present solely an issue of law, and because the second *Dodson* factor weighs against petitioner, the Court may not review the merits of petitioner's claims.

In addition, petitioner cannot establish the fourth *Dodson* factor. Petitioner argues that the ACCA relied only on portions of the affidavits from defense counsel. The ACCA's opinion, however demonstrates that it addressed petitioner's claim of ineffective assistance of counsel, supplemented the record by soliciting affidavits from petitioner's counsel, applied the governing *Strickland* standard, and rejected the claim after an analysis of the record. Thus the military courts gave full and fair consideration to petitioner's claim, and because the fourth *Dodson* factor does not favor petitioner, the Court does not reach the merits of petitioner's claim for that reason as well. The Court therefore denies the petition.

The Court also addresses petitioner's motion for discovery of a transcript of a telephone call between a fellow inmate and the victim of his offenses (his step-daughter). Petitioner has submitted an affidavit by the inmate stating that the victim admitted that she did not wish to testify but that her mother made her do so. A habeas petitioner is not entitled to discovery as a matter of course, although a court may in its discretion grant leave to conduct discovery for good cause shown. See *Bracy v. Gramley*, 520 U.S. 899, 904

(1997) (citing Rule Governing § 2254 cases, Rule 6(a)). Good cause may be shown if specific allegations provide a reason to believe that if facts are fully developed, the petitioner may be able to demonstrate an entitlement to relief. *See id.* at 908-09 (citing *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). As respondent points out in opposing the motion, the alleged statement by the victim does not suggest that petitioner did not commit the crime. Petitioner insists that the statement (along with other evidence) shows a possible motive from the victim to have fabricated her story. In the end, however, the facts at issue in the discovery request do not bear on the *Dodson* factors that preclude this Court's merits review, namely whether the ACCA fully considered the claim and whether the claim involves solely a question of law (indeed, petitioner's reliance on such evidence tends to confirm that the claim involves a consideration of facts). Accordingly, good cause has not been shown, and the Court in its discretion denies the motion for leave to conduct discovery.

Finally, the Court addresses petitioner's motion for an extension of time in which to file a traverse. Petitioner states that he seeks such an extension because the contents of the traverse will depend on the Court's ruling on the discovery motion. Petitioner mailed the motion to the Court on April 17, although it was not filed until April 28, 2023. On April 25, however, petitioner mailed the Court a traverse, which was filed on April 27, 2023. In that traverse, petitioner addressed the relevant *Dodson* factors on which the Court's decision turns. Accordingly, the Court denies the motion for an extension as moot.

IT IS THEREFORE ORDERED BY THE COURT THAT the petition for habeas corpus under 28 U.S.C. § 2241 is hereby **denied**.

IT IS FURTHER ORDERED BY THE COURT THAT petitioner's motion for leave to conduct discovery (Doc. # 6) is hereby **denied**.

IT IS FUTHER ORDERED THAT petitioner's motion for an extension of time (Doc. # 12) is hereby **denied as moot**.

IT IS SO ORDERED.

Dated this 2nd day of May, 2023, in Kansas City, Kansas.

/s/ John W. Lungstrum
Hon. John W. Lungstrum
United States District Judge

D

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
BURTON, RODRIGUEZ, and FLEMING
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant First Class SEAN A. GRAY
United States Army, Appellant

ARMY 20180353

Headquarters, I Corps
Lanny J. Acosta, Jr., Timothy P. Hayes, Jr., and James P. Arguelles, Military Judges
Colonel Steven C. Henricks, Staff Judge Advocate

For Appellant: Captain Steven J. Dray, JA; Matthew Flynn, Esquire (on brief).

For Appellee: Colonel Steven P. Haight, JA; Lieutenant Colonel Wayne H. Williams, JA; Major Craig Schapira, JA; Captain Brian Jones, JA (on brief).

28 October 2019

MEMORANDUM OPINION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

FLEMING, Judge:

Appellant sexually assaulted his adopted step-daughter, DG, on numerous occasions when she was between the ages of thirteen and sixteen.¹ At sixteen years old, DG gave birth to appellant's biological daughter and step-granddaughter.

¹ A military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of six specifications of sexual assault of a child, two specifications of sexual assault, three specifications of assault consummated by a battery, one specification of adultery, and two specifications of violating a lawful general regulation, in violation of Articles 120b, 120, 128, 134, and 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 920b, 920, 928, 934, and 892. The military judge found the two specifications alleging Article 92 violations were an unreasonable multiplication of charges and conditionally dismissed one of the specifications (Specification 1 of Charge V) pending final appellate review of the

(continued . . .)

~~Appellant, thirty-seven years old, a Sergeant First Class with thirteen years of service in the Army, and a 13 GT score, claims his trial defense counsel were ineffective in that they instructed him to plead guilty to offenses he did not commit, to lie in the stipulation of fact, and to provide false testimony during his providence inquiry.~~ We ordered affidavits from appellant's trial defense counsel who deny appellant's assertions. Appellant requests a post-trial fact finding hearing to resolve alleged disputed questions of fact from the affidavits.

After a review of the entire record, including the affidavits from the trial defense counsel, appellant, and appellant's uncle, we determine a post-trial fact finding hearing is not necessary. We find no unethical behavior on the part of the defense counsel and conclude their representation was not ineffective. Accordingly, we affirm the findings and sentence.

BACKGROUND

Appellant entered DG's life when she was six years old. He married her mother and adopted DG as his daughter, along with her three other siblings. The following discussion highlights appellant's sexual abuse of DG as admitted to by appellant in his stipulation of fact and thirty-five pages of providence inquiry with the military judge.

Appellant's Sexual Abuse of DG from Thirteen to Sixteen Years Old

When DG turned thirteen years old, appellant "tried to fight the sexual attraction [he] felt towards [DG]." On multiple occasions when she was thirteen, appellant would isolate DG from the rest of the family by bringing her to an empty bedroom in the house. Once in the bedroom, appellant would undress DG. He would direct her to lay down on a bed and he would digitally penetrate her. After a few minutes, appellant would proceed to insert his penis in her vagina.

Around DG's fourteenth birthday, appellant and DG's mother separated. Appellant moved from Alaska to Colorado and his wife moved with the children to Washington State. During his move to Colorado, appellant stopped to visit DG and her siblings for a month. During the visit, he rented a hotel room. On several occasions during this one month visit, appellant would isolate DG from her siblings in the hotel room. He would undress her, direct her to lay down on a bed, and he would digitally penetrate her. After a few minutes, appellant would proceed to

(... continued)

other specification (Specification 2 of Charge V). The military judge sentenced appellant to a dishonorable discharge and confinement for forty-four years. The convening authority approved the sentence as adjudged.

insert his penis in her vagina. On several occasions, appellant told DG that "she better not tell."

After these events, DG confided in friends at school that she was being sexually assaulted by her father. A police investigation ensued, and appellant denied the allegations. During DG's interview with police, she expressed she was uncomfortable and scared. During the course of the interview, DG would neither confirm nor deny that she was being sexually assaulted by appellant. Despite DG's outcry, appellant continued to sexually assault her.

Appellant visited DG and her siblings several times in Washington State when she was fifteen. Again, appellant would rent a hotel room and have DG and her siblings visit him at the hotel. On multiple occasions, appellant would isolate DG from her siblings and sexually assault her. On one of these occasions, DG cried during the assault. Appellant ignored her crying and sexually assaulted DG later, again, that same day, while the other children were sleeping.

Shortly after DG's sixteenth birthday, she and her siblings visited appellant for the summer in Colorado. During this summer visit, appellant continued to engage in sexual intercourse with DG. When she returned from visiting appellant, DG became very sick. She was taken to the hospital over the course of the next several months and treated for a variety of possible illnesses. Around Thanksgiving, doctors determined DG was twenty weeks pregnant with a conception date in the summer she visited appellant.

DG informed her mother that appellant was the father. Appellant denied he sexually assaulted his daughter and denied having sexual intercourse with her. At sixteen years old, DG gave birth. A paternity test confirmed appellant was the father.

Appellant's Guilty Plea & Post-Trial Affidavits

Appellant entered into a pretrial agreement to plead guilty to all of the aforementioned sexual assaults of DG.² As a result of the pretrial agreement, the government agreed to dismiss twenty other specifications, including three specifications of rape of a child against one of his other daughters, in violation of Article 120b, UCMJ, which each carried a maximum punishment of life without

² Appellant also pleaded guilty to three specifications of assaulting a subordinate soldier, Private E-2 (PV2) KD; one specification of committing adultery with PV2 KD; and two specifications of having an inappropriate relationship with PV2 KD in violation of Articles 128, 134, and 92, UCMJ.

eligibility for parole.³ As part of his pretrial agreement, appellant entered into a seven-page stipulation of fact which was admitted at trial. In this stipulation, appellant admitted to the underlying facts for each of the charges to which he pleaded guilty.

Now on appeal, appellant alleges he engaged in only one act of consensual sexual intercourse with DG, after her sixteen birthday, which resulted in her pregnancy. He claims, however, in his post-trial affidavit that he never sexually assaulted DG while she was between the ages of thirteen and sixteen.⁴

Appellant asserts he pleaded guilty to sexually assaulting DG because his defense counsel told him he “had to lie” because “a court-martial panel would not believe that the sex was consensual and [would find appellant] guilty with a lengthy sentence.” Appellant claims he told his defense counsel, during a recess in the middle of his providence inquiry, that “[he] was not comfortable lying to the military judge.” Appellant claims his defense counsel responded that “lying to the judge in order to get the benefit of the plea was in [his] best interest.” After the military judge sentenced appellant to confinement for forty-four years, appellant claims his defense counsel told him, “[w]hen you get your appellate lawyer, you tell them what I made you do.”⁵

³ The specifications dismissed as a result of appellant’s guilty plea allege offenses against appellant’s other children and DG’s mother: three specifications of rape of a child, two specifications of sexual assault of a child, three specifications of sexual abuse of a child, nine specifications of assault consummated by a battery upon a child, one specification of aggravated assault upon a child, one specification of attempted assault upon a child, and one specification of assault consummated by a battery upon DG’s mother in violation of Articles 120b and 128, UCMJ.

⁴ We note appellant’s affidavit to this court was submitted as an “*unsworn* declaration under penalty of perjury in accordance with 28 U.S.C. § 1746.” (emphasis added). Despite the unsworn nature of appellant’s affidavit, we afford it the same weight as if it were a sworn affidavit.

⁵ In support of his claim, appellant’s uncle submitted an affidavit stating “[a]fter the sentence was announced, I walked into a back room with [appellant] and his lawyers. I witnessed [appellant’s] lawyers tell [appellant] that the plea was not a good decision, and that they would tell [appellant’s] appellate lawyers it was a bad decision[.]” This affidavit was also submitted as an “unsworn declaration under penalty of perjury in accordance with 28 U.S.C. § 1746.” Despite the unsworn nature of appellant’s uncle’s affidavit, we afford it the same weight as if it were a sworn affidavit.

Affidavits from Trial Defense Counsel

Appellant's trial defense counsel submitted affidavits stating they never advised appellant to lie. In fact, trial defense counsel state they told appellant multiple times not to lie. As stated by defense counsel in her affidavit:

[Appellant] initially said the sex with DG was consensual and that he was not sure of the exact date but thought it was after her 16th birthday, but before the guilty plea he changed that and admitted that the sex with DG was nonconsensual and that some of it was before she was 16 years old. Over the, approximately one year, and a half that I represented appellant, his version of events changed multiple times. . . . [I] told [appellant] what the evidence showed. . . . [I] told [appellant] multiple times that I did not want him to lie.

Appellant's defense counsel agreed with appellant's affidavit that they told him they did not think they would be successful at a contested trial, and if found guilty, he would likely receive a lengthy sentence. Defense counsel reiterated in their affidavits, "No one on the defense team advised [appellant] to lie or agree to factual inaccuracies. [I] did say that I thought a pretrial agreement was in his best interest." And, "[I] informed [appellant] that the law did not permit him to lie, that I advised him not to do so."

In a recess during the providence inquiry, trial defense counsel recall appellant expressing a concern that he was admitting to inaccurate facts. Defense counsel states appellant was again advised:

We believed the [offer to plead guilty] would result in a more favorable outcome than a contested trial, we could not advise him to lie, and his two options were to answer affirmatively to the questions in the providence inquiry or to proceed to a contested trial. [Appellant] elected to proceed with the providence inquiry.

Defense counsel deny they told appellant, after the military judge announced his sentence, to tell his appellate attorney, "what I made you do." Defense counsel explains, "[I] told [appellant] he should be honest with his appellate attorney regarding his views of my performance."⁶

⁶ Assuming appellant's claim is true, we do not find defense counsel's assessment

(continued . . .)

LAW AND DISCUSSION

To establish an ineffective assistance of counsel claim, which we review de novo, an appellant must show: “(1) his counsel’s performance fell below an objective standard of reasonableness; and (2) the counsel’s deficient performance gives rise to a ‘reasonable probability’ that the result of the proceeding would have been different without counsel’s unprofessional errors.” *United States v. Akbar*, 74 M.J. 364, 371 (C.A.A.F. 2015) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)) (emphasis in original).

When we evaluate the first *Strickland* prong, we “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” 466 U.S. at 689. Appellant has the burden to show “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 687; see also *Harrington v. Richter*, 562 U.S. 86, 104 (2011).

Appellant’s affidavit to this court alleges his defense counsel were ineffective because they advised him: (1) to sign a pretrial agreement to plead guilty to offenses he did not commit, and (2) to sign an inaccurate stipulation of fact. The affidavits from appellant’s defense counsel deny appellant’s allegations.

Pursuant to *United States v. Ginn*, 47 M.J. 236, 244-45 (C.A.A.F. 1997), this court need only order a fact finding hearing to resolve conflicting affidavits when the case cannot be resolved through one of the five *Ginn* principles. We find the fourth and fifth *Ginn* principles, discussed in-depth below, are present in appellant’s case. Accordingly, a fact finding hearing is not necessary and we determine appellant’s claims of ineffective assistance of counsel are meritless.

(. . . continued)

of their own performance relevant to this court’s determination. Whether a counsel is ineffective is an objective inquiry. See *Harrington v. Richter*, 562 U.S. 86, 104 (2011). “Regardless of whether it is favorable or unfavorable, we give little weight to counsels’ subjective assessment of their own performance and instead conduct an objective assessment of their performance.” *United States v. Scott*, 2018 CCA LEXIS 522, *14 (Army Ct. Crim. App. 30 Oct. 2018) (mem. op.) (citing *Richter*, 562 U.S. at 109-10). “*Strickland*, however calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind.” *Richter*, 562 U.S. at 110 (citations omitted).

Fourth Ginn Principle

Circular
logic —
Under the fourth *Ginn* principle, even if an appellant's post-trial affidavit is factually adequate on its face, we may "discount those factual assertions and decide the legal issue" if "the appellate filings and the record as a whole compellingly demonstrate the improbability of those facts." *Id.* at 248 (quotation omitted). A review of the record as a whole, particularly appellant's pretrial agreement, stipulation of fact, and his responses to the military judge at trial, demonstrate the improbability of his post-trial allegations.

First, in appellant's offer to plead guilty, submitted to the convening authority, appellant states in the first paragraph that he recognizes his "moral and legal right to plead not guilty." At the end of appellant's offer to plead guilty, he states "this offer to plead guilty originated with me. No person has made any attempt to force or coerce me into making this offer." Appellant's signature appears at the end of the document. At trial, the military judge addressed these provisions with appellant and he confirmed his agreement to those statements.

Next, at appellant's guilty plea, the military judge confirmed with appellant that he voluntarily signed the stipulation of fact because he believed it was in his best interest and that the contents were true.⁷ The military judge explained that if appellant disagreed with anything in the stipulation of fact, he should inform the military judge. The military judge gave appellant an eighteen-minute recess to review the stipulation of fact to ensure its accuracy. Upon returning from the recess, the military judge confirmed with appellant that he voluntarily signed the stipulation and that it was accurate. Despite these extensive discussions between appellant and the military judge, appellant did not express any hesitation to the military judge that the stipulation of fact was inaccurate or that he was coerced into pleading guilty.

Appellant also claims his defense counsel told him to lie in a recess during his providence inquiry. At the beginning of appellant's guilty plea, the military judge advised appellant that he should only plead guilty if he, was in fact, guilty. The military judge advised appellant that if he told the military judge anything untrue, his statements could be used against him for charges of perjury. Further, the military judge explained all of the elements of the offenses to which appellant pleaded guilty and instructed appellant to ask himself whether the element was true and whether he wanted to admit it was true. Appellant acknowledged all

⁷ We pause to note that three weeks elapsed between appellant signing his stipulation of fact and his guilty plea. During those three weeks, appellant had ample time to reconsider his decision to sign the stipulation of fact and his decision to plead guilty.

advisements, answered affirmatively that he wished to plead guilty, and stated he understood all of the elements for each offense.

During the recess appellant describes in his affidavit, his defense counsel advised him that without the plea deal he was facing a maximum sentence of life without eligibility for parole. His defense counsel evaluated the government's chance of convicting appellant as being high. "Telling an accused that the evidence against them is strong and the potential penalties for a conviction are great is not coercion." *United States v. Fernandez*, 2018 CCA LEXIS 546, *9 (Army Ct. Crim. App. 16 Nov. 2018) (mem. op.). Upon our review of the record of trial, defense counsel's evaluation of appellant's case appears more than reasonable.

Appellant proceeded with the providence inquiry and provided evidence for every element of every charge. The military judge then confirmed, again, that appellant was pleading guilty voluntarily and of his own free will, that no one threatened him or "tried in any way" to force him to plead guilty, and that he was satisfied with his defense counsel. The record as a whole compellingly demonstrates the improbability that appellant's defense counsel told him to lie.

Fifth Ginn Principle

Under the fifth *Ginn* principle:

[W]hen an appellate claim of ineffective representation contradicts a matter that is within the record of a guilty plea, an appellate court may decide the issue on the basis of the appellate file and record (including the admissions made in the plea inquiry at trial and appellant's expression of satisfaction with counsel at trial) unless the appellant sets forth facts that would rationally explain why he would have made such statements at trial but not upon appeal.

Ginn, 47 M.J. 248.

Appellant's affidavit does not provide a rational explanation as to why his signed offer to plead guilty, signed stipulation of fact and affirmations of its accuracy to the military judge, admissions on the record during his providence inquiry, and appellant's expression of satisfaction with his defense counsel to the military judge are not true.

We also note that nothing in appellant's unsworn statement during sentencing proceedings undermines his providence inquiry. In fact, appellant's unsworn statement further solidified his guilt. He described himself as "weak minded." Appellant directly addressed DG and stated, "I'm supposed to be your step-father

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and protector. Instead, I misused your trust in me and my position to have sex with you. What I did was wrong.”

Appellant’s affidavit requests this court disbelieve all of his statements in his offer to plead guilty, stipulation of fact, his affirmations to the military judge, his detailed statements admitting all of the elements of the offenses, and his unsworn statement. Either appellant is lying to this court in his affidavit, or he committed perjury when he lied repeatedly to the military judge during his guilty plea.

Appellant’s credibility is further damaged by his original denial that he did not have sexual intercourse with DG, which he was forced to retract when a DNA test proved he was the biological father of DG’s child and that he was clearly lying. Appellant’s defense counsel related a similar experience stating, “[appellant’s] version of events changed multiple times.”


The objective facts from the record do not support appellant’s assertions. Appellant has failed to set forth facts that rationally explain why he would make such statements at trial but not upon appeal. We do not see the need for a hearing on the matter. Accordingly, we find neither deficient performance nor prejudice regarding appellant’s representation.

CONCLUSION

The finding as to Specification 1 of Charge V is DISMISSED conditioned upon Specification 2 of Charge V surviving “final judgment” of the proceedings. The remaining findings of guilty and the sentence are AFFIRMED.

Senior Judge BURTON and Judge RODRIGUEZ concur.

FOR THE COURT:


JOHN P. TAITT
Acting Clerk of Court

E

ANNUAL CORRECTIONAL REPORT										REPORT CONTROL SYMBOL DD-P&R(A)2067			
1. REPORT IS DUE TO: UNITED STATES DISCIPLINARY BARRACKS (USDB), KS													
2. BRANCH United States Army				3. REPORT DATE (YYYYMMDD) 20200101				4. PERIOD COVERED 2019/01/01 - 2019/12/31			5. REPORTING YEAR 2019		
6. POINT OF CONTACT													
a. NAME (Last, First, Middle Initial) COL HORTON, CAROLINE K				b. COMMERCIAL TELEPHONE NUMBER (Include area code) [REDACTED]				c. DSN TELEPHONE NUMBER [REDACTED]					
7. FACILITIES AND CAPACITIES OF REPORTING SERVICE													
				NUMBER OF FACILITIES (i)		TOTAL DESIGN CAPACITY (ii)		TOTAL OPERATIONAL CAPACITY (iii)		HEAD COUNT ON 31 DEC REPORTING YEAR			
a. CONUS (Including OCONUS)										PRE-TRIAL (iv)		POST-TRIAL (v)	
												TOTAL (vi)	
(1) LEVEL 1 CORRECTIONAL FACILITIES				0		0		0		0		0	
(2) LEVEL 2 CORRECTIONAL FACILITIES				0		0		0		0		0	
(3) LEVEL 3 CORRECTIONAL FACILITIES				1		515		460		0		401	
b. TOTAL				1		515		460		0		401	
8. TOTAL PRISONER POPULATION IN CORRECTIONAL FACILITIES													
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. ON 31 DEC PRIOR YEAR		6	74	14	197	3	42	1	52	0	1	24	366
b. ON 31 DEC REPORTING YEAR		6	79	16	204	4	42	1	48	0	1	27	374
9. SEX OF PRISONERS													
ON 31 DECEMBER REPORTING YEAR		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. MALE		6	79	16	204	4	42	1	48	0	1	27	374
b. FEMALE		0	0	0	0	0	0	0	0	0	0	0	0
c. TOTAL (a. + b.)		6	79	16	204	4	42	1	48	0	1	27	374
10. RACE OF PRISONERS													
ON 31 DECEMBER REPORTING YEAR		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. AMERICAN INDIAN/ALASKA NATIVE		0	1	0	1	0	1	0	3	0	0	0	6
b. ASIAN		0	0	1	8	0	1	0	4	0	0	1	13
c. BLACK OR AFRICAN AMERICAN		0	19	2	57	0	5	1	8	0	0	3	89
d. NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		0	0	0	0	0	0	0	0	0	0	0	0
e. WHITE		6	59	13	138	4	35	0	33	0	1	23	266
f. TWO OR MORE RACES		0	0	0	0	0	0	0	0	0	0	0	0
g. UNKNOWN		0	0	0	0	0	0	0	0	0	0	0	0
h. TOTAL (Sum of a. - g.)		6	79	16	204	4	42	1	48	0	1	27	374
11. ETHNICITY OF PRISONERS													
ON 31 DECEMBER REPORTING YEAR		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. HISPANIC OR LATINO		0	6	1	44	0	11	0	2	0	0	1	63
b. NOT HISPANIC OR LATINO		6	73	15	158	4	31	1	46	0	1	26	309
c. UNKNOWN		0	0	0	2	0	0	0	0	0	0	0	2
d. TOTAL (Sum of a. - c.)		6	79	16	204	4	42	1	48	0	1	27	374

12. TOTAL NUMBER OF PRISONERS BY SENTENCE LENGTH ON 31 DECEMBER REPORTING YEAR												
	AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. 1 YEAR OR MORE (>365 days)	6	79	16	204	4	42	1	48	0	1	27	374
b. LESS THAN 1 YEAR (<365 days)	0	0	0	0	0	0	0	0	0	0	0	0
c. PRE-TRIAL CONFINEMENT	0	0	0	0	0	0	0	0	0	0	0	0
d. UNKNOWN	0	0	0	0	0	0	0	0	0	0	0	0
e. TOTAL (Sum of a. - d.)	6	79	16	204	4	42	1	48	0	1	27	374

13. CONTROLLING OFFENSE BY BRANCH OF SERVICE ON 31 DEC REPORTING YEAR												
	AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. VIOLENT OFFENSES												
(1) MURDER	0	17	2	43	1	7	0	5	0	0	3	72
(2) VOLUNTARY MANSLAUGHTER	0	0	0	1	0	0	0	0	0	0	0	1
(3) NEGLIGENCE MANSLAUGHTER	0	0	0	0	0	0	0	1	0	0	0	1
(4) KIDNAPPING	0	0	0	0	0	0	0	0	0	0	0	0
(5) ROBBERY	0	0	0	0	0	0	0	0	0	0	0	0
(6) ASSAULT	0	1	0	5	0	1	0	0	0	0	0	7
(7) OTHER VIOLENT OFFENSES	0	1	0	2	0	1	0	1	0	0	0	5
b. SEXUAL OFFENSES (See table in Instructions)												
(1) RAPE W/ADULT	0	13	6	17	0	8	0	3	0	0	6	41
(2) RAPE W/CHILD	2	14	1	64	2	13	0	17	0	0	5	108
(3) SEXUAL ASSAULT W/ADULT	1	9	2	18	0	3	1	2	0	0	4	32
(4) SEXUAL ASSAULT W/CHILD	1	9	3	32	0	4	0	10	0	0	4	55
(5) SEXUAL MISCONDUCT W/ADULT	0	0	1	1	0	0	0	1	0	0	1	2
(6) SEXUAL MISCONDUCT W/CHILD	1	13	0	17	1	4	0	6	0	1	2	41
(7) OTHER SEXUAL OFFENSES	1	2	1	1	0	0	0	1	0	0	2	4
c. PROPERTY OFFENSES												
(1) BURGLARY	0	0	0	0	0	0	0	0	0	0	0	0
(2) LARCENY/THEFT	0	0	0	0	0	0	0	0	0	0	0	0
(3) AUTO THEFT	0	0	0	0	0	0	0	0	0	0	0	0
(4) ARSON	0	0	0	0	0	0	0	0	0	0	0	0
(5) FRAUD/FORGERY	0	0	0	0	0	0	0	0	0	0	0	0
(6) STOLEN PROPERTY	0	0	0	0	0	0	0	0	0	0	0	0
(7) OTHER PROPERTY OFFENSES	0	0	0	0	0	0	0	0	0	0	0	0
d. DRUG OFFENSES												
(1) POSSESSION/USE	0	0	0	0	0	0	0	0	0	0	0	0
(2) TRAFFICKING	0	0	0	1	0	0	0	0	0	0	0	1
(3) OTHER/UNSPECIFIED DRUG OFFENSES	0	0	0	0	0	0	0	0	0	0	0	0
e. PUBLIC ORDER OFFENSES												
(1) WEAPONS	0	0	0	0	0	0	0	0	0	0	0	0
(2) DRIVING WHILE INTOXICATED	0	0	0	0	0	0	0	0	0	0	0	0
(3) OTHER PUBLIC ORDER OFFENSES	0	0	0	0	0	0	0	0	0	0	0	0
f. MILITARY OFFENSES	0	0	0	2	0	1	0	1	0	0	0	4
g. ALL OTHER OFFENSES	0	0	0	0	0	0	0	0	0	0	0	0
h. TOTAL	6	79	16	204	4	42	1	48	0	1	27	374

14. CONTROLLING OFFENSE BY LENGTH OF SENTENCE ON 31 DEC REPORTING YEAR	6 MONTHS OR LESS (i)	6 MONTHS +1 DAY TO 1 YEAR (ii)	1 YEAR +1 DAY TO 3 YEARS (iii)	3 YEARS +1 DAY TO 6 YEARS (iv)	6 YEARS +1 DAY TO 10 YEARS (v)	10 YEARS +1 DAY (vi)	LIFE (vii)	DEATH (viii)	TOTAL (ix)				
a. VIOLENT OFFENSES													
(1) MURDER	0	0	0	0	0	47	26	4	77				
(2) VOLUNTARY MANSLAUGHTER	0	0	0	0	0	1	0	0	1				
(3) NEGLIGENT MANSLAUGHTER	0	0	0	0	0	0	0	0	0				
(4) KIDNAPPING	0	0	0	0	0	0	0	0	0				
(5) ROBBERY	0	0	0	0	0	0	0	0	0				
(6) ASSAULT	0	0	0	0	2	2	0	0	4				
(7) OTHER VIOLENT OFFENSES	0	0	0	0	0	2	0	0	2				
b. SEXUAL OFFENSES (See table in Instructions)													
(1) RAPE W/ADULT	0	0	0	0	5	40	1	0	46				
(2) RAPE W/CHILD	0	0	1	0	0	109	3	0	113				
(3) SEXUAL ASSAULT W/ADULT	0	0	0	0	2	22	0	0	24				
(4) SEXUAL ASSAULT W/CHILD	0	0	0	0	0	35	0	0	35				
(5) SEXUAL MISCONDUCT W/ADULT	0	0	0	0	1	7	0	0	8				
(6) SEXUAL MISCONDUCT W/CHILD	0	0	0	0	1	71	0	0	72				
(7) OTHER SEXUAL OFFENSES	0	0	0	0	0	6	0	0	6				
c. PROPERTY OFFENSES													
(1) BURGLARY	0	0	0	0	0	0	0	0	0				
(2) LARCENY/THEFT	0	0	0	0	0	0	0	0	0				
(3) AUTO THEFT	0	0	0	0	0	0	0	0	0				
(4) ARSON	0	0	0	0	0	0	0	0	0				
(5) FRAUD/FORGERY	0	0	0	0	0	0	0	0	0				
(6) STOLEN PROPERTY	0	0	0	0	0	0	0	0	0				
(7) OTHER PROPERTY OFFENSES	0	0	0	0	0	0	0	0	0				
d. DRUG OFFENSES													
(1) POSSESSION/USE	0	0	0	0	0	0	0	0	0				
(2) TRAFFICKING	0	0	0	0	0	0	0	0	0				
(3) OTHER/UNSPECIFIED DRUG OFFENSES	0	0	0	0	0	0	0	0	0				
e. PUBLIC ORDER OFFENSES													
(1) WEAPONS	0	0	0	0	0	0	0	0	0				
(2) DRIVING WHILE INTOXICATED	0	0	0	0	0	0	0	0	0				
(3) OTHER PUBLIC ORDER OFFENSES	0	0	0	0	0	1	0	0	1				
f. MILITARY OFFENSES	0	0	0	0	1	3	0	0	4				
g. ALL OTHER OFFENSES	0	0	0	0	0	0	0	0	0				
h. TOTAL	0	0	1	0	12	346	30	4	393				
15. PRE-TRIAL CONFINEMENTS													
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. FROM (YYYYMMDD) 01 JAN RY	b. TO (YYYYMMDD) 31 DEC RY	0	0	0	0	0	0	0	0	0	0	0	0
16. ADMISSIONS OF SENTENCED PRISONERS													
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. FROM (YYYYMMDD) 01 JAN RY	b. TO (YYYYMMDD) 31 DEC RY												
c. NEW COURT COMMITMENTS													
(1) FROM SUMMARY COURT		0	0	0	0	0	0	0	0	0	0	0	0
(2) FROM SPECIAL COURT		0	0	0	0	0	0	0	0	0	0	0	0
(3) FROM GENERAL COURT		0	1	0	15	0	1	2	0	0	0	2	17
d. PAROLE/MSR VIOLATORS													
		0	0	0	1	0	0	0	0	0	0	0	1
e. TRANSFERS													
(1) OTHER BRANCH OF SERVICE		0	0	0	0	0	0	0	1	0	0	0	1
(2) SAME BRANCH OF SERVICE		0	0	0	1	0	0	0	0	0	0	0	1
(3) CIVILIAN FACILITY		0	0	0	0	0	0	0	0	0	0	0	0
f. ESCAPEES RETURNED													
		0	0	0	0	0	0	0	0	0	0	0	0
g. TOTAL ADMISSIONS													
		0	1	0	17	0	1	2	1	0	0	2	20

a. FROM (YYYYMMDD) 01 JAN RY		b. TO (YYYYMMDD) 31 DEC RY		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
c. UNCONDITIONAL				OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
(1) EXPIRATION OF SENTENCE				0	0	0	3	0	1	0	1	0	0	0	5
(2) CLEMENCY				0	0	0	0	0	0	0	0	0	0	0	0
(3) OTHER UNCONDITIONAL				0	0	0	1	0	1	0	1	0	0	0	3
(4) TOTAL UNCONDITIONAL (Sum (1)-(3))				0	0	0	4	0	2	0	2	0	0	0	8
d. CONDITIONAL															
(1) PAROLES				0	0	0	5	0	0	0	1	0	0	0	6
(2) MANDATORY SUPERVISED RELEASE				1	2	0	4	0	1	0	2	0	0	1	9
(3) RESTORED TO DUTY				0	0	0	0	0	0	0	0	0	0	0	0
(4) OTHER CONDITIONAL				0	0	0	0	0	0	0	0	0	0	0	0
(5) TOTAL CONDITIONAL (Sum (1)-(4))				1	2	0	9	0	1	0	3	0	0	1	15
e. DEATHS															
(1) EXECUTIONS				0	0	0	0	0	0	0	0	0	0	0	0
(2) ILLNESSES/NATURAL CAUSES (Other than AIDS)				0	0	0	0	0	0	0	0	0	0	0	0
(3) AIDS-RELATED CAUSES				0	0	0	0	0	0	0	0	0	0	0	0
(4) SUICIDES				0	0	0	0	0	0	0	0	0	0	0	0
(5) ACCIDENTS				0	0	0	0	0	0	0	0	0	0	0	0
(6) DEATHS BY ANOTHER PERSON				0	0	0	0	0	0	0	0	0	0	0	0
(7) OTHER DEATHS				0	0	0	0	0	0	0	0	0	0	0	0
(8) TOTAL DEATHS (Sum (1) - (7))				0	0	0	0	0	0	0	0	0	0	0	0
f. OTHER															
(1) ESCAPEES FROM CONFINEMENT				0	0	0	0	0	0	0	0	0	0	0	0
(2) TRANSFER TO FEDERAL CORRECTIONAL FACILITY				0	1	1	1	0	1	0	0	0	0	1	3
(3) TRANSFER TO OTHER BRANCH OF SERVICE				0	0	0	0	0	0	0	0	0	0	0	0
(4) TRANSFER TO SAME BRANCH OF SERVICE				0	0	0	0	0	0	0	0	0	0	0	0
(5) OTHER RELEASES (Specify)															
(6) TOTAL OTHER RELEASES (Sum of (1)-(4))				0	1	1	1	0	1	0	0	0	0	1	3
g. TOTAL RELEASES				1	3	1	14	0	4	0	5	0	0	2	26

18. VICTIM/WITNESS NOTIFICATIONS AND ACTIONS

ANNUAL CORRECTIONAL REPORT										REPORT CONTROL SYMBOL DD-P&R(A)2067			
1. REPORT IS DUE TO: UNITED STATES DISCIPLINARY BARRACKS (USDB), KS													
2. BRANCH United States Army				3. REPORT DATE (YYYYMMDD) 20210101				4. PERIOD COVERED 2020/01/01 - 2020/12/31				5. REPORTING YEAR 2020	
6. POINT OF CONTACT													
a. NAME (Last, First, Middle Initial) COL JOHNSTON, MICHAEL A				b. COMMERCIAL TELEPHONE NUMBER (Include area code) [REDACTED]				c. DSN TELEPHONE NUMBER [REDACTED]					
7. FACILITIES AND CAPACITIES OF REPORTING SERVICE													
a. CONUS (Including OCONUS)				NUMBER OF FACILITIES (i)	TOTAL DESIGN CAPACITY (ii)	TOTAL OPERATIONAL CAPACITY (iii)	HEAD COUNT ON 31 DEC REPORTING YEAR						
							PRE-TRIAL (iv)		POST-TRIAL (v)		TOTAL (vi)		
(1) LEVEL 1 CORRECTIONAL FACILITIES				0	0	0	0	0	0	0			
(2) LEVEL 2 CORRECTIONAL FACILITIES				0	0	0	0	0	0	0			
(3) LEVEL 3 CORRECTIONAL FACILITIES				1	515	460	0	393	393				
b. TOTAL				1	515	460	0	393	393				
8. TOTAL PRISONER POPULATION IN CORRECTIONAL FACILITIES													
[REDACTED]		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. ON 31 DEC PRIOR YEAR		6	79	16	204	4	42	1	48	0	1	27	374
b. ON 31 DEC REPORTING YEAR		5	77	15	205	4	39	2	45	0	1	26	367
9. SEX OF PRISONERS													
ON 31 DECEMBER REPORTING YEAR		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. MALE		5	77	15	205	4	39	2	45	0	1	26	367
b. FEMALE		0	0	0	0	0	0	0	0	0	0	0	0
c. TOTAL (a. + b.)		5	77	15	205	4	39	2	45	0	1	26	367
10. RACE OF PRISONERS													
ON 31 DECEMBER REPORTING YEAR		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. AMERICAN INDIAN/ALASKA NATIVE		0	1	0	2	0	0	0	3	0	0	0	6
b. ASIAN		0	0	1	8	0	0	0	4	0	0	1	12
c. BLACK OR AFRICAN AMERICAN		0	18	2	55	0	5	2	9	0	0	4	87
d. NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		0	0	0	0	0	0	0	0	0	0	0	0
e. WHITE		5	58	12	139	4	34	0	29	0	1	21	261
f. TWO OR MORE RACES		0	0	0	1	0	0	0	0	0	0	0	1
g. UNKNOWN		0	0	0	0	0	0	0	0	0	0	0	0
h. TOTAL (Sum of a. - g.)		5	77	15	205	4	39	2	45	0	1	26	367
11. ETHNICITY OF PRISONERS													
ON 31 DECEMBER REPORTING YEAR		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. HISPANIC OR LATINO		0	5	1	38	0	8	0	1	0	0	1	52
b. NOT HISPANIC OR LATINO		5	72	14	167	4	31	2	44	0	1	25	315
c. UNKNOWN		0	0	0	0	0	0	0	0	0	0	0	0
d. TOTAL (Sum of a. - c.)		5	77	15	205	4	39	2	45	0	1	26	367

12. TOTAL NUMBER OF PRISONERS BY SENTENCE LENGTH													
ON 31 DECEMBER REPORTING YEAR		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. 1 YEAR OR MORE (>365 days)		5	77	15	205	4	39	2	45	0	1	26	367
b. LESS THAN 1 YEAR (<365 days)		0	0	0	0	0	0	0	0	0	0	0	0
c. PRE-TRIAL CONFINEMENT		0	0	0	0	0	0	0	0	0	0	0	0
d. UNKNOWN		0	0	0	0	0	0	0	0	0	0	0	0
e. TOTAL (Sum of a. - d.)		5	77	15	205	4	39	2	45	0	1	26	367

13. CONTROLLING OFFENSE BY BRANCH OF SERVICE													
ON 31 DEC REPORTING YEAR		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. VIOLENT OFFENSES													
(1) MURDER		0	16	2	46	1	7	0	5	0	0	3	74
(2) VOLUNTARY MANSLAUGHTER		0	0	0	1	0	0	0	0	0	0	0	1
(3) NEGLIGENT MANSLAUGHTER		0	0	0	0	0	0	0	0	0	0	0	0
(4) KIDNAPPING		0	0	0	0	0	0	0	0	0	0	0	0
(5) ROBBERY		0	0	0	0	0	0	0	0	0	0	0	0
(6) ASSAULT		0	1	0	3	0	0	0	0	0	0	0	4
(7) OTHER VIOLENT OFFENSES		0	0	0	1	0	1	0	0	0	0	0	2
b. SEXUAL OFFENSES (See table in Instructions)													
(1) RAPE W/ADULT		1	12	6	17	0	7	0	3	0	0	7	39
(2) RAPE W/CHILD		1	15	2	64	2	11	0	18	0	0	5	108
(3) SEXUAL ASSAULT W/ADULT		0	4	1	13	0	3	2	1	0	0	3	21
(4) SEXUAL ASSAULT W/CHILD		0	6	1	19	0	3	0	6	0	0	1	34
(5) SEXUAL MISCONDUCT W/ADULT		0	2	2	3	0	0	0	1	0	0	2	6
(6) SEXUAL MISCONDUCT W/CHILD		2	18	0	35	1	6	0	9	0	1	3	69
(7) OTHER SEXUAL OFFENSES		1	2	1	1	0	0	0	1	0	0	2	4
c. PROPERTY OFFENSES													
(1) BURGLARY		0	0	0	0	0	0	0	0	0	0	0	0
(2) LARCENY/THEFT		0	0	0	0	0	0	0	0	0	0	0	0
(3) AUTO THEFT		0	0	0	0	0	0	0	0	0	0	0	0
(4) ARSON		0	0	0	0	0	0	0	0	0	0	0	0
(5) FRAUD/FORGERY		0	0	0	0	0	0	0	0	0	0	0	0
(6) STOLEN PROPERTY		0	0	0	0	0	0	0	0	0	0	0	0
(7) OTHER PROPERTY OFFENSES		0	0	0	0	0	0	0	0	0	0	0	0
d. DRUG OFFENSES													
(1) POSSESSION/USE		0	0	0	0	0	0	0	0	0	0	0	0
(2) TRAFFICKING		0	0	0	0	0	0	0	0	0	0	0	0
(3) OTHER/UNSPECIFIED DRUG OFFENSES		0	0	0	0	0	0	0	0	0	0	0	0
e. PUBLIC ORDER OFFENSES													
(1) WEAPONS		0	0	0	0	0	0	0	0	0	0	0	0
(2) DRIVING WHILE INTOXICATED		0	0	0	0	0	0	0	0	0	0	0	0
(3) OTHER PUBLIC ORDER OFFENSES		0	1	0	0	0	0	0	0	0	0	0	1
f. MILITARY OFFENSES		0	0	0	2	0	1	0	1	0	0	0	4
g. ALL OTHER OFFENSES		0	0	0	0	0	0	0	0	0	0	0	0
h. TOTAL		5	77	15	205	4	39	2	45	0	1	26	367

14. CONTROLLING OFFENSE BY LENGTH OF SENTENCE ON 31 DEC REPORTING YEAR		6 MONTHS OR LESS (i)	6 MONTHS +1 DAY TO 1 YEAR (ii)	1 YEAR +1 DAY TO 3 YEARS (iii)	3 YEARS +1 DAY TO 6 YEARS (iv)	6 YEARS +1 DAY TO 10 YEARS (v)	10 YEARS +1 DAY (vi)	LIFE (vii)	DEATH (viii)	TOTAL (ix)					
a. VIOLENT OFFENSES															
(1) MURDER		0	0	0	0	0	47	24	4	75					
(2) VOLUNTARY MANSLAUGHTER		0	0	0	0	0	1	0	0	1					
(3) NEGLIGENT MANSLAUGHTER		0	0	0	0	0	1	0	0	1					
(4) KIDNAPPING		0	0	0	0	0	0	0	0	0					
(5) ROBBERY		0	0	0	0	0	0	0	0	0					
(6) ASSAULT		0	0	0	0	2	5	0	0	7					
(7) OTHER VIOLENT OFFENSES		0	0	0	0	1	4	0	0	5					
b. SEXUAL OFFENSES (See table in Instructions)															
(1) RAPE W/ADULT		0	0	0	0	6	40	1	0	47					
(2) RAPE W/CHILD		0	0	0	0	0	110	3	0	113					
(3) SEXUAL ASSAULT W/ADULT		0	0	0	1	3	32	0	0	36					
(4) SEXUAL ASSAULT W/CHILD		0	0	0	0	1	58	0	0	59					
(5) SEXUAL MISCONDUCT W/ADULT		0	0	0	0	1	2	0	0	3					
(6) SEXUAL MISCONDUCT W/CHILD		0	0	0	0	1	42	0	0	43					
(7) OTHER SEXUAL OFFENSES		0	0	0	0	0	6	0	0	6					
c. PROPERTY OFFENSES															
(1) BURGLARY		0	0	0	0	0	0	0	0	0					
(2) LARCENY/THEFT		0	0	0	0	0	0	0	0	0					
(3) AUTO THEFT		0	0	0	0	0	0	0	0	0					
(4) ARSON		0	0	0	0	0	0	0	0	0					
(5) FRAUD/FORGERY		0	0	0	0	0	0	0	0	0					
(6) STOLEN PROPERTY		0	0	0	0	0	0	0	0	0					
(7) OTHER PROPERTY OFFENSES		0	0	0	0	0	0	0	0	0					
d. DRUG OFFENSES															
(1) POSSESSION/USE		0	0	0	0	0	0	0	0	0					
(2) TRAFFICKING		0	0	1	0	0	0	0	0	1					
(3) OTHER/UNSPECIFIED DRUG OFFENSES		0	0	0	0	0	0	0	0	0					
e. PUBLIC ORDER OFFENSES															
(1) WEAPONS		0	0	0	0	0	0	0	0	0					
(2) DRIVING WHILE INTOXICATED		0	0	0	0	0	0	0	0	0					
(3) OTHER PUBLIC ORDER OFFENSES		0	0	0	0	0	0	0	0	0					
f. MILITARY OFFENSES															
(1) WEAPONS		0	0	0	0	1	2	1	0	4					
g. ALL OTHER OFFENSES															
(1) WEAPONS		0	0	0	0	0	0	0	0	0					
h. TOTAL		0	0	1	1	16	350	29	4	401					
15. PRE-TRIAL CONFINEMENTS															
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)			
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED		
a. FROM (YYYYMMDD) 01 JAN RY	b. TO (YYYYMMDD) 31 DEC RY	0	0	0	0	0	0	0	0	0	0	0	0		
16. ADMISSIONS OF SENTENCED PRISONERS															
a. FROM (YYYYMMDD) 01 JAN RY		b. TO (YYYYMMDD) 31 DEC RY		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
				OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
c. NEW COURT COMMITMENTS															
(1) FROM SUMMARY COURT		0	0	0	0	0	0	0	0	0	0	0	0	0	0
(2) FROM SPECIAL COURT		0	0	0	0	0	0	0	0	0	0	0	0	0	0
(3) FROM GENERAL COURT		2	9	4	28	1	3	0	3	0	0	7	43		
d. PAROLE/MSR VIOLATORS															
(1) FROM SUMMARY COURT		0	2	0	2	0	1	0	0	0	0	0	0	5	
e. TRANSFERS															
(1) OTHER BRANCH OF SERVICE		0	1	0	0	0	0	0	0	0	0	0	0	1	
(2) SAME BRANCH OF SERVICE		0	0	0	0	0	0	0	0	0	0	0	0	0	
(3) CIVILIAN FACILITY		0	0	0	0	0	0	0	0	0	0	0	0	0	
f. ESCAPEES RETURNED															
(1) FROM SUMMARY COURT		0	0	0	0	0	0	0	0	0	0	0	0	0	
g. TOTAL ADMISSIONS															
(1) FROM SUMMARY COURT		2	12	4	30	1	4	0	3	0	0	7	49		

17. RELEASES OF SENTENCED PRISONERS													
a. FROM (YYYYMMDD) 01 JAN RY	b. TO (YYYYMMDD) 31 DEC RY	AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
c. UNCONDITIONAL													
(1) EXPIRATION OF SENTENCE		0	1	0	2	0	0	0	0	0	0	0	3
(2) CLEMENCY		0	0	0	0	0	0	0	0	0	0	0	0
(3) OTHER UNCONDITIONAL		0	1	2	0	0	0	0	0	0	0	2	1
(4) TOTAL UNCONDITIONAL (Sum (1)-(3))		0	2	2	2	0	0	0	0	0	0	2	4
d. CONDITIONAL													
(1) PAROLES		1	1	0	7	0	0	0	1	0	0	1	9
(2) MANDATORY SUPERVISED RELEASE		0	2	0	8	0	3	0	6	0	0	0	19
(3) RESTORED TO DUTY		0	0	0	0	0	0	0	0	0	0	0	0
(4) OTHER CONDITIONAL		0	0	0	0	0	0	0	0	0	0	0	0
(5) TOTAL CONDITIONAL (Sum (1)-(4))		1	3	0	15	0	3	0	7	0	0	1	28
e. DEATHS													
(1) EXECUTIONS		0	0	0	0	0	0	0	0	0	0	0	0
(2) ILLNESSES/NATURAL CAUSES (Other than AIDS)		0	0	0	0	0	0	0	0	0	0	0	0
(3) AIDS-RELATED CAUSES		0	0	0	0	0	0	0	0	0	0	0	0
(4) SUICIDES		0	0	0	0	0	0	0	0	0	0	0	0
(5) ACCIDENTS		0	0	0	0	0	0	0	0	0	0	0	0
(6) DEATHS BY ANOTHER PERSON		0	0	0	0	0	0	0	0	0	0	0	0
(7) OTHER DEATHS		0	0	0	0	0	0	0	0	0	0	0	0
(8) TOTAL DEATHS (Sum (1) - (7))		0	0	0	0	0	0	0	0	0	0	0	0
f. OTHER													
(1) ESCAPEES FROM CONFINEMENT		0	0	0	0	0	0	0	0	0	0	0	0
(2) TRANSFER TO FEDERAL CORRECTIONAL FACILITY		1	1	0	3	0	0	0	0	0	0	1	4
(3) TRANSFER TO OTHER BRANCH OF SERVICE		0	0	0	0	0	0	0	0	0	0	0	0
(4) TRANSFER TO SAME BRANCH OF SERVICE		0	0	0	4	0	0	0	0	0	0	0	4
(5) OTHER RELEASES (Specify)													
(6) TOTAL OTHER RELEASES (Sum of (1)-(4))		1	1	0	7	0	0	0	0	0	0	1	8
g. TOTAL RELEASES		2	6	2	24	0	3	0	7	0	0	4	40

ANNUAL CORRECTIONAL REPORT										REPORT CONTROL SYMBOL DD-P&R(A)2067				
1. REPORT IS DUE TO: UNITED STATES DISCIPLINARY BARRACKS (USDB), KS														
2. BRANCH United States Army				3. REPORT DATE (YYYYMMDD) 20220101				4. PERIOD COVERED 2021/01/01 - 2021/12/31			5. REPORTING YEAR 2021			
6. POINT OF CONTACT														
a. NAME (Last, First, Middle Initial) COL JOHNSTON, MICHAEL A				b. COMMERCIAL TELEPHONE NUMBER (Include area code) [REDACTED]				c. DSN TELEPHONE NUMBER [REDACTED]						
7. FACILITIES AND CAPACITIES OF REPORTING SERVICE														
[REDACTED]				NUMBER OF FACILITIES (i)	TOTAL DESIGN CAPACITY (ii)		TOTAL OPERATIONAL CAPACITY (iii)		HEAD COUNT ON 31 DEC REPORTING YEAR					
a. CONUS (Including OCONUS)									PRE-TRIAL (iv)		POST-TRIAL (v)		TOTAL (vi)	
(1) LEVEL 1 CORRECTIONAL FACILITIES				0	0		0		0		0		0	
(2) LEVEL 2 CORRECTIONAL FACILITIES				0	0		0		0		0		0	
(3) LEVEL 3 CORRECTIONAL FACILITIES				1	515		460		0		395		395	
b. TOTAL				1	515		460		0		395		395	
8. TOTAL PRISONER POPULATION IN CORRECTIONAL FACILITIES														
[REDACTED]		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)		
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	
a. ON 31 DEC PRIOR YEAR		5	77	15	205	4	39	2	45	0	1	26	367	
b. ON 31 DEC REPORTING YEAR		5	78	13	213	4	39	2	40	0	1	24	371	
9. SEX OF PRISONERS ON 31 DECEMBER REPORTING YEAR														
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)		
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	
a. MALE		5	78	13	213	4	39	2	40	0	1	24	371	
b. FEMALE		0	0	0	0	0	0	0	0	0	0	0	0	
c. TOTAL (a. + b.)		5	78	13	213	4	39	2	40	0	1	24	371	
10. RACE OF PRISONERS ON 31 DECEMBER REPORTING YEAR														
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)		
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	
a. AMERICAN INDIAN/ALASKA NATIVE		0	1	0	1	0	0	0	3	0	0	0	5	
b. ASIAN		0	1	0	7	0	0	0	4	0	0	0	12	
c. BLACK OR AFRICAN AMERICAN		0	16	2	58	0	6	2	8	0	0	4	88	
d. NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		0	1	0	0	0	0	0	0	0	0	0	1	
e. WHITE		5	58	11	146	4	31	0	25	0	1	20	261	
f. TWO OR MORE RACES		0	1	0	1	0	0	0	0	0	0	0	2	
g. UNKNOWN		0	0	0	0	0	2	0	0	0	0	0	2	
h. TOTAL (Sum of a. - g.)		5	78	13	213	4	39	2	40	0	1	24	371	
11. ETHNICITY OF PRISONERS ON 31 DECEMBER REPORTING YEAR														
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)		
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	
a. HISPANIC OR LATINO		0	5	1	43	0	8	0	3	0	0	1	59	
b. NOT HISPANIC OR LATINO		5	73	12	170	4	31	2	37	0	1	23	312	
c. UNKNOWN		0	0	0	0	0	0	0	0	0	0	0	0	
d. TOTAL (Sum of a. - c.)		5	78	13	213	4	39	2	40	0	1	24	371	

12. TOTAL NUMBER OF PRISONERS BY SENTENCE LENGTH												
ON 31 DECEMBER REPORTING YEAR												
	AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. 1 YEAR OR MORE (>365 days)	5	78	13	213	4	39	2	40	0	1	24	371
b. LESS THAN 1 YEAR (<365 days)	0	0	0	0	0	0	0	0	0	0	0	0
c. PRE-TRIAL CONFINEMENT	0	0	0	0	0	0	0	0	0	0	0	0
d. UNKNOWN	0	0	0	0	0	0	0	0	0	0	0	0
e. TOTAL (Sum of a. - d.)	5	78	13	213	4	39	2	40	0	1	24	371

13. CONTROLLING OFFENSE BY BRANCH OF SERVICE												
ON 31 DEC REPORTING YEAR												
	AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. VIOLENT OFFENSES												
(1) MURDER	0	16	2	48	1	7	0	3	0	0	3	74
(2) VOLUNTARY MANSLAUGHTER	0	0	0	1	0	0	0	0	0	0	0	1
(3) NEGLIGENT MANSLAUGHTER	0	0	0	0	0	0	0	0	0	0	0	0
(4) KIDNAPPING	0	0	0	0	0	0	0	0	0	0	0	0
(5) ROBBERY	0	0	0	0	0	0	0	0	0	0	0	0
(6) ASSAULT	0	0	0	2	0	0	0	0	0	0	0	2
(7) OTHER VIOLENT OFFENSES	0	1	0	2	0	0	0	0	0	0	0	3
b. SEXUAL OFFENSES (See table in Instructions)												
(1) RAPE W/ADULT	1	13	4	20	0	7	0	3	0	0	5	43
(2) RAPE W/CHILD	1	15	3	66	2	13	0	18	0	0	6	112
(3) SEXUAL ASSAULT W/ADULT	0	4	1	13	0	1	2	1	0	0	3	19
(4) SEXUAL ASSAULT W/CHILD	0	6	1	18	0	2	0	3	0	0	1	29
(5) SEXUAL MISCONDUCT W/ADULT	0	2	1	4	0	1	0	0	0	0	1	7
(6) SEXUAL MISCONDUCT W/CHILD	2	17	0	35	1	7	0	9	0	1	3	69
(7) OTHER SEXUAL OFFENSES	1	3	1	3	0	0	0	2	0	0	2	8
c. PROPERTY OFFENSES												
(1) BURGLARY	0	0	0	0	0	0	0	0	0	0	0	0
(2) LARCENY/THEFT	0	0	0	0	0	0	0	0	0	0	0	0
(3) AUTO THEFT	0	0	0	0	0	0	0	0	0	0	0	0
(4) ARSON	0	0	0	0	0	0	0	0	0	0	0	0
(5) FRAUD/FORGERY	0	0	0	0	0	0	0	0	0	0	0	0
(6) STOLEN PROPERTY	0	0	0	0	0	0	0	0	0	0	0	0
(7) OTHER PROPERTY OFFENSES	0	0	0	0	0	0	0	0	0	0	0	0
d. DRUG OFFENSES												
(1) POSSESSION/USE	0	0	0	0	0	0	0	0	0	0	0	0
(2) TRAFFICKING	0	0	0	0	0	0	0	0	0	0	0	0
(3) OTHER/UNSPECIFIED DRUG OFFENSES	0	0	0	0	0	0	0	0	0	0	0	0
e. PUBLIC ORDER OFFENSES												
(1) WEAPONS	0	0	0	0	0	0	0	0	0	0	0	0
(2) DRIVING WHILE INTOXICATED	0	0	0	0	0	0	0	0	0	0	0	0
(3) OTHER PUBLIC ORDER OFFENSES	0	1	0	0	0	0	0	0	0	0	0	1
f. MILITARY OFFENSES	0	0	0	1	0	1	0	1	0	0	0	3
g. ALL OTHER OFFENSES	0	0	0	0	0	0	0	0	0	0	0	0
h. TOTAL	5	78	13	213	4	39	2	40	0	1	24	371

14. CONTROLLING OFFENSE BY LENGTH OF SENTENCE ON 31 DEC REPORTING YEAR		6 MONTHS OR LESS (i)	6 MONTHS +1 DAY TO 1 YEAR (ii)	1 YEAR +1 DAY TO 3 YEARS (iii)	3 YEARS +1 DAY TO 6 YEARS (iv)	6 YEARS +1 DAY TO 10 YEARS (v)	10 YEARS +1 DAY (vi)	LIFE (vii)	DEATH (viii)	TOTAL (ix)			
a. VIOLENT OFFENSES													
(1) MURDER		0	0	0	0	0	48	25	4	77			
(2) VOLUNTARY MANSLAUGHTER		0	0	0	0	0	1	0	0	1			
(3) NEGLIGENT MANSLAUGHTER		0	0	0	0	0	0	0	0	0			
(4) KIDNAPPING		0	0	0	0	0	0	0	0	0			
(5) ROBBERY		0	0	0	0	0	0	0	0	0			
(6) ASSAULT		0	0	0	0	1	1	0	0	2			
(7) OTHER VIOLENT OFFENSES		0	0	0	0	0	3	0	0	3			
b. SEXUAL OFFENSES (See table in Instructions)													
(1) RAPE W/ADULT		0	0	1	0	3	43	1	0	48			
(2) RAPE W/CHILD		0	0	1	0	0	114	3	0	118			
(3) SEXUAL ASSAULT W/ADULT		0	0	0	0	2	20	0	0	22			
(4) SEXUAL ASSAULT W/CHILD		0	0	0	0	0	30	0	0	30			
(5) SEXUAL MISCONDUCT W/ADULT		0	0	0	1	0	7	0	0	8			
(6) SEXUAL MISCONDUCT W/CHILD		0	0	0	0	0	72	0	0	72			
(7) OTHER SEXUAL OFFENSES		0	0	0	1	0	9	0	0	10			
c. PROPERTY OFFENSES													
(1) BURGLARY		0	0	0	0	0	0	0	0	0			
(2) LARCENY/THEFT		0	0	0	0	0	0	0	0	0			
(3) AUTO THEFT		0	0	0	0	0	0	0	0	0			
(4) ARSON		0	0	0	0	0	0	0	0	0			
(5) FRAUD/FORGERY		0	0	0	0	0	0	0	0	0			
(6) STOLEN PROPERTY		0	0	0	0	0	0	0	0	0			
(7) OTHER PROPERTY OFFENSES		0	0	0	0	0	0	0	0	0			
d. DRUG OFFENSES													
(1) POSSESSION/USE		0	0	0	0	0	0	0	0	0			
(2) TRAFFICKING		0	0	0	0	0	0	0	0	0			
(3) OTHER/UNSPECIFIED DRUG OFFENSES		0	0	0	0	0	0	0	0	0			
e. PUBLIC ORDER OFFENSES													
(1) WEAPONS		0	0	0	0	0	0	0	0	0			
(2) DRIVING WHILE INTOXICATED		0	0	0	0	0	0	0	0	0			
(3) OTHER PUBLIC ORDER OFFENSES		0	0	0	0	0	1	0	0	1			
f. MILITARY OFFENSES													
(1) MILITARY OFFENSES		0	0	0	0	1	2	0	0	3			
g. ALL OTHER OFFENSES													
(1) ALL OTHER OFFENSES		0	0	0	0	0	0	0	0	0			
h. TOTAL													
		0	0	2	2	7	351	29	4	395			
15. PRE-TRIAL CONFINEMENTS													
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. FROM (YYYYMMDD) 01 JAN RY	b. TO (YYYYMMDD) 31 DEC RY	0	0	0	0	0	0	0	0	0	0	0	0
16. ADMISSIONS OF SENTENCED PRISONERS													
		AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
a. FROM (YYYYMMDD) 01 JAN RY	b. TO (YYYYMMDD) 31 DEC RY												
c. NEW COURT COMMITMENTS													
		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
(1) FROM SUMMARY COURT		0	0	0	0	0	0	0	0	0	0	0	0
(2) FROM SPECIAL COURT		0	0	0	0	0	0	0	0	0	0	0	0
(3) FROM GENERAL COURT		0	6	1	18	0	5	0	1	0	0	1	30
d. PAROLE/MSR VIOLATORS													
		0	1	0	0	0	0	0	0	0	0	0	1
e. TRANSFERS													
		0	0	0	2	0	0	1	2	0	0	1	4
(2) SAME BRANCH OF SERVICE		0	1	0	5	0	0	0	0	0	0	0	6
(3) CIVILIAN FACILITY		0	0	0	0	0	0	0	0	0	0	0	0
f. ESCAPEES RETURNED													
		0	0	0	0	0	0	0	0	0	0	0	0
g. TOTAL ADMISSIONS													
		0	8	1	25	0	5	1	3	0	0	2	41

17. RELEASES OF SENTENCED PRISONERS													
a. FROM (YYYYMMDD) 01 JAN RY	b. TO (YYYYMMDD) 31 DEC RY	AIR FORCE (1)		ARMY (2)		MARINE CORPS (3)		NAVY (4)		COAST GUARD (5)		TOTAL (6)	
c. UNCONDITIONAL		OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED	OFFICER	ENLISTED
(1) EXPIRATION OF SENTENCE		0	0	0	0	0	0	0	1	0	0	0	1
(2) CLEMENCY		0	0	0	0	0	0	0	0	0	0	0	0
(3) OTHER UNCONDITIONAL		0	0	0	0	0	0	1	0	0	0	1	0
(4) TOTAL UNCONDITIONAL (Sum (1)-(3))		0	0	0	0	0	0	1	1	0	0	1	1
d. CONDITIONAL													
(1) PAROLES		0	2	0	5	0	2	0	1	0	0	0	10
(2) MANDATORY SUPERVISED RELEASE		0	5	1	6	0	3	0	5	0	0	1	19
(3) RESTORED TO DUTY		0	0	0	0	0	0	0	0	0	0	0	0
(4) OTHER CONDITIONAL		0	0	0	0	0	0	0	0	0	0	0	0
(5) TOTAL CONDITIONAL (Sum (1)-(4))		0	7	1	11	0	5	0	6	0	0	1	29
e. DEATHS													
(1) EXECUTIONS		0	0	0	0	0	0	0	0	0	0	0	0
(2) ILLNESSES/NATURAL CAUSES (Other than AIDS)		0	0	0	0	0	0	0	0	0	0	0	0
(3) AIDS-RELATED CAUSES		0	0	0	0	0	0	0	0	0	0	0	0
(4) SUICIDES		0	0	0	0	0	0	0	0	0	0	0	0
(5) ACCIDENTS		0	0	0	0	0	0	0	0	0	0	0	0
(6) DEATHS BY ANOTHER PERSON		0	0	0	0	0	0	0	0	0	0	0	0
(7) OTHER DEATHS		0	0	0	0	0	0	0	0	0	0	0	0
(8) TOTAL DEATHS (Sum (1) - (7))		0	0	0	0	0	0	0	0	0	0	0	0
f. OTHER													
(1) ESCAPEES FROM CONFINEMENT		0	0	0	0	0	0	0	0	0	0	0	0
(2) TRANSFER TO FEDERAL CORRECTIONAL FACILITY		0	0	2	5	0	0	0	0	0	0	2	5
(3) TRANSFER TO OTHER BRANCH OF SERVICE		0	0	0	0	0	0	0	0	0	0	0	0
(4) TRANSFER TO SAME BRANCH OF SERVICE		0	0	0	3	0	0	0	1	0	0	0	4
(5) OTHER RELEASES (Specify)													
(6) TOTAL OTHER RELEASES (Sum of (1)-(4))		0	0	2	8	0	0	0	1	0	0	2	9
g. TOTAL RELEASES		0	7	3	19	0	5	1	8	0	0	4	39
18. VICTIM/WITNESS NOTIFICATIONS AND ACTIONS													