

No. _____

IN THE
Supreme Court of the United States

ADAM J. SHERMAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Armed Forces**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

By operation of a federal statute, Petitioner was entitled to appellate review of his criminal conviction scrutinizing the “entire record” of his case. 10 U.S.C. § 866(d)(1) (2018). This requirement included any information added to the record during any post-trial hearings. This statutory mandate creates a substantial right for an appellant to a complete review of the record when appealing their case.

Petitioner appealed his conviction and alleged that he received ineffective assistance of counsel at trial. To help it assess this issue, the appellate court ordered a post-trial fact-finding hearing. Following the hearing and subsequent briefing by the parties, the appellate court issued an opinion that expressly declined to consider certain information from the post-trial fact-finding hearing. Despite a statutory duty to review the “entire record,” the appellate court’s analysis omitted significant evidence obtained at the hearing. 10 U.S.C. § 866(d)(1) (2018).

The question presented is:

Does statutory text imposing a duty for an appellate court to review the “entire record” require consideration of all the evidence from a post-trial fact-finding hearing?

PARTIES TO THE PROCEEDING

All parties to this proceeding appear in the caption on the cover page of this petition.

CORPORATE DISCLOSURE STATEMENT

No nongovernmental corporations are parties to this proceeding.

RELATED PROCEEDINGS

Other than the direct appeals that form the basis for this petition, there are no related proceedings for the purposes of Rule 14.1(b)(iii).

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INTRODUCTION

Petitioner is a United States Air Force servicemember who was convicted at a general court-martial. He sought relief on appeal based on ineffective assistance of counsel, among other errors. The Air Force Court of Criminal Appeals (Air Force Court) determined that a post-trial fact-finding hearing was necessary to resolve conflicts between Petitioner's allegation and the declarations of his trial defense counsel. Once it received the findings of fact from that hearing, the Air Force Court conducted a review and issued its opinion. Even though it was obligated by statute to review the entire record, including the full contents of a post-trial hearing, the Air Force Court did not address substantial evidence from that hearing. It stated it was not addressing evidence that it considered beyond the scope of the questions it posed when ordering the hearing.

The Court should grant certiorari and determine whether the Air Force Court's decision to disregard evidence from the post-trial hearing that it ordered violated its statutory duty to review the entire record. Resolving this issue will clarify the extent of statutorily-imposed reviews following additional proceedings that produce new records. This will, in turn, prevent appellate courts and other review authorities from evading their statutory obligations and conducting insufficient reviews in the future. Additionally, remanding this case for the Air Force Court to complete a proper review in accordance with the statute's command will uphold Petitioner's substantial right to a complete review of the entire record of his case.

PETITION FOR A WRIT OF CERTIORARI

Senior Airman Adam J. Sherman, United States Air Force, respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Armed Forces.

DECISIONS BELOW

The decision of the Air Force Court is not reported. It is available at 2025 CCA LEXIS 206, 2025 WL 1369955, and is reproduced at pages 2a–30a. The United States Court of Appeals for the Armed Forces’ (CAAF’s) denial of the petition for grant of review is not yet reported. It is available at 2025 CAAF LEXIS 825, 2025 WL 2912651, and reproduced at page 1a.

JURISDICTION

The Air Force Court had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866 (2018). The CAAF had jurisdiction pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3). The CAAF denied review on September 30, 2025. On December 19, 2025, the Chief Justice extended the time in which to file a petition for certiorari to February 27, 2026. This Court has jurisdiction under 28 U.S.C. § 1259(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. VI provides in relevant part: “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.”

Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018), provides in relevant part: “The Court may affirm only such findings of guilty, and the sentence

or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.”

Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3) (2018) provides:

ADDITIONAL PROCEEDINGS.—If the Court of Criminal Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue, subject to such limitations as the Court may direct and under such regulations as the president may prescribe. If the Court of Appeals for the Armed Forces determines that additional proceedings are warranted, the Court of Criminal Appeals shall order a hearing or other proceeding in accordance with the direction of the court of Appeals for the Armed Forces.

STATEMENT OF THE CASE

The governing statute imposed a statutory obligation on the Air Force Court to review the “entire record” of a court-martial and affirm only such findings of guilty as it finds correct in law and fact and determines should be approved. 10 U.S.C. § 866(d)(1) (2018). A review of the entire record includes the entirety of matters added to the record as a result of a post-trial hearing. Thus, when a Court of Criminal Appeals orders such a hearing, it must consider all of the information in the record resulting from that hearing. Despite this obligation, the Air Force Court expressly refused to consider some information included in the record from a post-trial hearing in Petitioner’s case. Consequently, the Air Force Court’s review did not fulfill its statutory duty and deprived

Petitioner of his right to a full review of the entire record of his case.

A military judge sitting as a general court-martial convicted Petitioner Adam J. Sherman, a member of the U.S. Air Force on active duty, contrary to his pleas, of rape of a child in violation of Article 120b, UCMJ, 10 U.S.C. § 920b. Entry of Judgment (EOJ). The court of first instance exercised federal jurisdiction pursuant to Article 2(a)(1), UCMJ, 10 U.S.C. § 802(a)(1). The military judge sentenced Petitioner to a reprimand, reduction to the grade of E-1, confinement for thirteen years, and a dishonorable discharge. EOJ.

Petitioner appealed his conviction, alleging he received ineffective assistance of counsel at trial, among other errors. To assist in reviewing the allegation of ineffective assistance, the Air Force Court ordered a post-trial fact-finding hearing to further develop the record. Following the hearing, the Air Force Court issued an opinion in which it expressly refused to consider some evidence from the post-trial fact-finding hearing. The Air Force Court concluded that Petitioner did not receive ineffective assistance and affirmed the findings and the sentence.

REASONS FOR GRANTING THE PETITION

The Air Force Court failed to fulfill its statutory duty, depriving Petitioner of his right to a full appellate review. This error diminished the analysis of Petitioner's ineffective assistance of counsel claim because the Air Force Court refused to consider witness testimony regarding deficient performance. This Court's review is warranted to underscore the proper application of the statutory term "entire

record” and ensure compliance with a mandatory scope of appellate review.

A. Servicemembers have a substantial right to appellate review of the entire record of their court-martial.

Military courts are creatures of statute with the jurisdiction and duties defined by the applicable statutes. *See Ortiz v. United States*, 585 U.S. 427, 431–32 (2018) (noting that “Congress has long provided for specialized military courts,” including several tiers of appellate courts); *see also Runkle v. United States*, 122 U.S. 543, 555–56 (1887) (“A court-martial organized under the laws of the United States is a court of special and limited jurisdiction.”). For the Courts of Criminal Appeals, including the Air Force Court, the enabling statute is Article 66, UCMJ, 10 U.S.C. § 866 (2018).¹ This statute required the Air Force Court to review the “entire record” when determining whether the findings of guilty and the sentence are correct in law and in fact and should be approved. 10 U.S.C. § 866(d)(1) (2018). It is a “plenary review,” and the appellate court “may not rely on only selected portions of a record or allegations of error alone.” *United States v. Chin*, 75 M.J. 220, 222 (C.A.A.F. 2016)² (citing *United States v. Adams*, 59

¹ Since Petitioner’s conviction is for an offense in 2019, the version of Article 66, UCMJ, in effect before 1 January 2021 applies here. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542 (e)(2), 134 Stat. 3388, 3612–13 (2021).

² *Chin* applied a previous version of Article 66, UCMJ, but the operative language requiring a review of the entire record is the same as in the version of the statute applicable to Petitioner’s case. *Compare* 10 U.S.C. § 866(d)(1) (2018), *with* 10 U.S.C. § 866(c) (2012).

M.J. 367, 372 (C.A.A.F. 2004)); see *Lewis v. Bickham*, 91 F.4th 1216, 1223 (5th Cir. 2024) (first quoting *United States v. Fisher*, 624 F.3d 713, 718 (5th Cir. 2010), then quoting *United States v. Bauman*, 887 F.2d 546, 550 (5th Cir. 1989)) (noting that “plenary review” involves scrutiny of the “entire record”).

The scope of the review mandated by the statute is greater than the scope of review in most civilian appellate courts. *United States v. Roach*, 66 M.J. 410, 413 (C.A.A.F. 2008) (“[T]he scope of review by the Courts of Criminal Appeals differs in significant respect from direct review in the civilian federal appellate courts.”) For example, while an appellant may have waived an issue at trial, they cannot waive a Court of Criminal Appeals’ statutory mandate to review the entire record unless they waive the right to appellate review altogether. *Chin*, 75 M.J. at 223. This means that Courts of Criminal Appeals have broader review authority than their civilian counterparts. See *id.* at 222 (citing Fed. R. Crim. Proc. 52(b); *United States v. Olano*, 507 U.S. 725, 731–33 (1993)) (contrasting plenary review under 10 U.S.C. § 866 with limitations on appellate review in federal civilian courts). When an appellant does not waive appellate review and a Court of Criminal Appeals, such as the Air Force Court, reviews a case, that court must fulfill its statutory obligation to review the entire record. *Id.* at 223 (citing *United States v. Miller*, 62 M.J. 471, 472 (C.A.A.F. 2006)).

The statutory mandate creates more than just a requirement for the Courts of Criminal Appeals—it creates a “substantial right” for appellants. *Id.* at 222 (citing *United States v. Jenkins*, 60 M.J. 27, 30 (C.A.A.F. 2004)). Petitioner, like all appellants in the military court system, has the right to a complete

review of the entire record of his court-martial. *Id.* When he chose to exercise this right by proceeding with appellate review, the Air Force Court was “commanded *by statute* to review the entire record.” *Id.* at 223.

B. The entire record of a court-martial includes information from a post-trial fact-finding hearing.

Military appellate courts may order post-trial hearings to gather additional evidence or resolve conflicting evidence, especially in cases where an issue, such as ineffective assistance of counsel, was discovered after trial.³ 10 U.S.C. § 866(f)(3) (2018) (authorizing Courts of Criminal Appeals to order a hearing or other additional proceedings); *United States v. Bess*, 80 M.J. 1, 12 (C.A.A.F. 2020) (describing potential reasons for a post-trial hearing).

Information produced from a post-trial fact-finding hearing is included as part of the entire record. *See* Rule for Courts-Martial (R.C.M.) 1112(c)(2) (“If additional proceedings are held after the court reporter certifies the record, a record of those proceedings shall be included in the record of trial, and a court reporter shall prepare a supplemental certification.”). Because they are part of the “entire record,” any findings of fact and conclusions of law from a post-trial fact-finding hearing must be reviewed as part of the plenary review of the entire record under 10 U.S.C. § 866(d)(1) (2018). *See United*

³ Post-trial fact-finding hearings in the military courts are often referred to as *DuBay* hearings. *See, e.g.*, Pet. App. 35a (citing *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967); *see also* Pet. App. 39a (using title “*DuBAY* HEARING – FINDINGS OF FACT”).

States v. Harpole, 77 M.J. 231, 238 (C.A.A.F. 2018) (“After the conclusion of [the post-trial fact-finding hearing], the record of trial and the military judge’s findings of fact and conclusions of law shall be returned” for review under 10 U.S.C. § 866.). Likewise, the briefs and arguments of counsel based on the post-trial fact-finding hearing become part of the entire record, as do all briefs and arguments. *United States v. Jessie*, 79 M.J. 437, 440–41 (C.A.A.F. 2020) (citing *United States v. Healy*, 26 M.J. 394, 396 (C.M.A. 1988)).

C. The Air Force Court chose to ignore part of the record from the post-trial fact-finding hearing.

After Petitioner asserted that he received ineffective assistance of counsel, the Air Force Court ordered a post-trial fact-finding hearing to resolve factual disputes between Petitioner and the declarations of his trial defense counsel. Pet. App. 16a–17a, 35a–37a. The Air Force Court’s order directed the trial judge conducting the hearing to address three specified questions “[a]t a minimum.” Pet. App. 36a–37a. The order did not specify a limit on the scope of the hearing, saying, “The military judge may address other matters that may arise during the fact-finding hearing that he or she deems pertinent to the issues in question.” Pet. App. 37a. The three questions focused primarily on the trial defense counsel’s efforts to obtain evidence from Petitioner and his wife. Pet. App. 36a–37a. Following the post-trial fact-finding hearing, the presiding judge provided findings of fact that addressed the three specified questions as well as additional information elicited at the hearing. Pet. App. 39a–47a. Both Petitioner and the Government submitted a brief

addressing the information from the hearing, as authorized in the Air Force Court's order. Pet. App. 17a, 38a.

The Air Force Court refused to consider some of the information from the post-trial fact-finding hearing, as addressed in the parties' briefs. The Air Force Court stated, "We do not address matters in the briefs that go beyond the scope of our order to the military judge and his findings of fact thereon." Pet. App. 17a. This violated the Air Force Court's duty to consider the "entire record." 10 U.S.C. § 866(d)(1) (2018). Once the Air Force Court ordered a post-trial fact-finding hearing, the results of that hearing became part of the record. R.C.M. 1112(c)(2). Similarly, the briefs submitted by Petitioner and the Government also became part of the record. *Jessie*, 79 M.J. at 440–41. Thus, when the Air Force Court conducted its Article 66, UCMJ, review following the hearing, it was "commanded *by statute*" to review the findings of fact and the parties' briefs in full. *Chin*, 75 M.J. at 223. By choosing not to address information it considered to be beyond the scope of its order, the Air Force Court failed to fulfill its statutory duty.

The order from the Air Force Court did not set strict limits for the post-trial fact-finding hearing. While it specified questions to be addressed at the hearing, the order stated that those questions must be addressed "[a]t a minimum." Pet. App. 36a–37a. This left open the possibility that the hearing would produce additional information, which it did. The open-ended nature of the order provided additional reason for the Air Force Court to consider all of the evidence from the hearing and the parties' briefings. Production of this evidence at the hearing fell under the presiding judge's "broad authority to hear

testimony, receive evidence, and enter findings of fact” regarding Petitioner’s ineffective assistance claim. Pet. App. 35a–36a. Contrary to the Air Force Court’s framing, information from the hearing and the briefs did not go beyond the scope of its order because the order granted broad, open-ended authority.

Refusing to consider information from the post-trial fact-finding hearing and the parties’ briefs violated the Air Force Court’s statutory obligation to review the entire record. 10 U.S.C. § 866(d)(1) (2018). This decision unreasonably narrowed the meaning of “entire record,” a frequently used term with regards to appellate review. *See, e.g., Greer v. United States*, 593 U.S. 503, 511 (2021) (citing *United States v. Vonn*, 535 U.S. 55, 58–59 (2002)) (“This Court has repeatedly stated that an appellate court conducting plain-error review may consider the *entire* record—not just the record from the particular proceeding where the error occurred.”); *Turner v. United States*, 582 U.S. 313, 325 (2017) (quoting *United States v. Agurs*, 427 U.S. 97, 112 (1976)) (“[This Court] must examine the trial record [and] ‘evaluat[e]’ the withheld evidence ‘in the context of the entire record’” (third alteration in original)). Moreover, it deprived Petitioner of his substantial right to a complete review of the entire record of his court-martial proceedings. *Chin*, 75 M.J. at 222. This warrants further review to reinforce the meaning of “entire record” and ensure appellate courts conduct adequate reviews that comply with statutes and other authorities.

D. The Air Force Court's limited review did not fully address Petitioner's ineffective assistance of counsel claim because it ignored key witnesses.

The Air Force Court's failure to fulfill its statutory duty had a detrimental impact on its analysis of petitioner's ineffective assistance of counsel claim. Because the specified questions focused mainly on the trial defense counsel's efforts to obtain information from Petitioner's wife, the Air Force Court's refusal to consider information it deemed beyond the scope of the questions resulted in an analysis that was also narrowly focused on that issue. Pet. App. 19a–27a. It largely ignored other important information, including testimony from Petitioner's employer at his second job. Pet. App. 48a–59a.

Petitioner's second employer testified at the post-trial fact-finding hearing that he was at the courthouse and ready to testify, but the trial defense counsel told him to leave. Pet. App. 56a–58a. He would have testified about Petitioner working for him almost every day, including Saturdays and Sundays, in addition to his Air Force duties. Pet. App. 54a–55a. This would have shown that Petitioner had almost no opportunity to commit the charged offense, which was alleged to have happened in the camper trailer where Petitioner lived. Pet. App. 23a. Despite this important revelation, the Air Force Court's analysis of ineffective assistance says almost nothing about this witness. Pet. App. 19a–27a.

The Air Force Court also ignored testimony from the post-trial fact-finding hearing from another witness who worked with Petitioner at his second job. Pet. App. 67a–71a. This witness similarly testified

that he saw Petitioner at his second job almost every day, working either before or after his Air Force shift. Pet. App. 68a–70a. This is further evidence of the limited opportunity for Petitioner to commit the charged offense. Even though this witness wrote a character statement for Petitioner, the witness did not recall the trial defense counsel interviewing him about his knowledge of Petitioner’s extensive work schedule. Pet. App. 70a. As with the employer, the Air Force Court did not address this witness’s testimony at the post-trial fact-finding hearing in its analysis. Pet. App. 19a–27a.

The Sixth Amendment guarantees reasonably effective assistance of counsel at trial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). By ignoring the testimony of these two witnesses at the post-trial fact-finding hearing, the Air Force Court disregarded evidence that Petitioner’s trial defense counsel either failed to uncover key information or failed to utilize the information they had. Such a failure to investigate would be an example of attorney performance that falls below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688, 690–91. Further, the volume and persuasiveness of available evidence revealed at the post-trial fact-finding hearing increases the likelihood that utilizing it would have led to a different result at trial, contrary to the Air Force Court’s prejudice analysis. Pet. App. 26a–27a; see *Strickland*, 466 U.S. at 691 (describing requirement that errors by counsel caused prejudice).

The Air Force Court’s departure from statutorily-mandated review standards improperly narrowed the scope of appellate review. The distorted meaning of the term “entire record” that it applied would result in insufficient reviews on a wide range of appellate

matters. Here, it caused the Air Force Court to overlook evidence of ineffective assistance developed at the post-trial fact-finding hearing. Petitioner has a right to a review of the information in the record that the Air Force Court refused to consider. 10 U.S.C. § 866(d)(1) (2018); *Chin*, 75 M.J. at 222. Because it failed to consider this information, the Air Force Court's decision is insufficient to meet statutory requirements and deprives Petitioner of a substantial right. Its analysis applied a warped meaning to a frequently used term, improperly curtailing required appellate review. A review of the "entire record" must consider *all* of the evidence from a post-trial fact-finding hearing, and an opinion that indicates otherwise propagates and incorrect statutory interpretation that merits review and reversal.

CONCLUSION

This Court should grant the petition for certiorari and remand the case to the Air Force Court to properly complete its review in accordance with the controlling statute.

Respectfully submitted,

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