

No. _____

IN THE
Supreme Court of the United States

COLIN R. COVITZ,
Petitioner,

v.

UNITED STATES,
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

In *United States v. Moreno*, the Court of Appeals for the Armed Forces held that military appellants are entitled to speedy post-trial processing under the Due Process Clause of the Fifth Amendment. 63 M.J. 129, 135 (C.A.A.F. 2006). This is distinct from a military appellant's statutory right to speedy post-trial processing. *United States v. Tardif*, 57 M.J. 219, 222 (C.A.A.F. 2002). Recently, Congress codified the *Tardif* holding in Article 66(d)(2), Uniform Code of Military Justice. 10 U.S.C. § 866(d)(2) (permitting military courts to grant sentencing relief for excessive post-trial delay).

Neither the text of this new statute, nor military precedent, requires an appellant to prove a due process violation before being entitled to relief for excessive post-trial delay. Nevertheless, the Air Force Court of Criminal Appeals required Petitioner to prove a due process violation to obtain relief.

The question presented is:

Did the Air Force Court of Criminal Appeals err when it held there was “no basis for relief” under 10 U.S.C. § 866(d)(2) merely because there was not a due process violation?

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

The Air Force Court of Criminal Appeals (Air Force Court) held that the Petitioner, Captain (Capt) Colin R. Covitz, had to prove a due process violation in order to get relief under Article 66(d)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d)(2). But no such requirement exists in the text of the statute or any military precedent. In fact, military precedent implies that no due process violation is required. *Compare Moreno*, 63 M.J. at 135 (ruling that military appellants have a constitutional right to speedy post-trial processing under the Due Process Clause), *with Tardif*, 57 M.J. at 222 (ruling that military appellants have a statutory right to speedy post-trial processing that does not require showing a due process violation). Because there is no basis for the Air Force Court's holding in law, this Court should grant review to reverse.

PETITION FOR A WRIT OF CERTIORARI

Capt Colin R. Covitz, 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 (CAAF) denying review of the Air Force Court decision.

DECISIONS BELOW

The decisions of the Air Force Court are unreported. The most recent decision of the Air Force Court is available at 2025 CCA LEXIS 105, 2025 WL 575737, and is reproduced at pages 2a-24a. The earlier decision of the Air Force Court is available at 2022 CCA LEXIS 563, 2022 WL 4592087, and is reproduced at pages 29a-73a. The CAAF's decision in Petitioner's case is not yet reported. It is available at 2025 CAAF LEXIS 538, 2025 WL 2301686, and

reproduced at page 1a.

JURISDICTION

The Air Force Court of Criminal Appeals (“Air Force Court”) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866. The CAAF had jurisdiction pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3). The CAAF declined to grant review and issued its order denying review on July 8, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1259(3).

STATUTORY PROVISION INVOLVED

Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), provides, in pertinent part, “Error or excessive delay. In any case before the Court of Criminal Appeals . . . the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record.”

STATEMENT OF THE CASE

I. Procedural Background

Capt Covitz had two courts-martial. Pet. App. 3a-4a. At his first court-martial, Capt Covitz was convicted of four counts of domestic violence. Pet. App. 3a. The Air Force Court set aside those convictions because of a voir dire issue, but it authorized a rehearing. *Id.*

On January 17, 2023, Capt Covitz was charged for the same crimes again. *Id.* at 4a. A military judge sitting alone found Capt Covitz guilty of two counts of domestic violence. *Id.* Capt Covitz was sentenced to

five months' confinement, forfeiture of \$6,127.00 pay per month for five months, and a reprimand. *Id.*

Following his conviction at the rehearing, Capt Covitz appealed to the Air Force Court. Pet. App. 5a. The Air Force Court set aside and dismissed one count of domestic violence, but affirmed the remaining one. *Id.* at 5a-6a The Air Force Court also affirmed the sentence. *Id.* at 38a.

II. Factual Background

Capt Covitz was sentenced on July 12, 2023. *Id.* at 2a. The military judge entered judgment sixty-eight days later. *Id.* at 33a The transcript was not completed until 103 days after sentencing. *Id.* at 34a And, this case was not docketed with the Air Force Court until 155 days after sentencing. *Id.* Capt Covitz raised a speedy post-trial issue to the Air Force Court. *Id.* at 5a. However, the Air Force Court declined to grant relief under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), because there was no due process violation. *Id.* at 38a. Capt Covitz sought review of that decision to the CAAF, but it declined review. Pet. App. 1a.

REASONS FOR GRANTING THE PETITION

Congress gave courts of criminal appeals (CCAs) the power to provide sentencing relief for excessive post-trial delay. 10 U.S.C. § 866(d)(2). Nothing in the plain text of the statute, or in military precedent, requires an appellant to demonstrate a due process violation for obtaining relief under Article 66(d)(2). Nevertheless, the Air Force Court required a due process violation here. This was legal error which this Court can and should fix. Alternatively, this Court can remand to the CAAF so that that court can resolve the scope and applicability of Article 66(d)(2).

I. The Air Force Court erred when it held there was “no basis for relief” under Article 66(d)(2) merely because there was no due process violation.

A. Article 66(d)(2) does not require a due process violation to trigger relief. The Air Force Court’s decision in the alternative was error requiring review.

In 2002, the CAAF decided *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002). In that case, the CAAF held that “an accused has a [statutory] right to timely review of the findings and sentence.” *Id.* at 222 (citing Article 66(c), UCMJ, 10 U.S.C. § 866(c) (2000)). Under Article 66(c), CCAs had authority to “tailor an appropriate remedy” for excessive post-trial delay. *Id.* at 225. *Tardif* relief was distinct from relief under the Due Process Clause. *United States v. Gay*, 74 M.J. 736, 742 (A.F. Ct. Crim. App. 2015) (citing *Tardif*, 57 M.J. at 224) (“[The CAAF] has specifically recognized that the [CCAs] have broad discretion to grant or deny relief for unreasonable or unexplained post-trial delay, even where the delay does not rise to the level of a due process violation.”).

A decade later, Congress codified *Tardif* in the Military Justice Act of 2016. *See United States v. Allison*, No. 201800251, 2021 CCA LEXIS 605, at *13 n.39 (N-M. Ct. Crim. App. Nov. 16, 2021). This Act “amended the UCMJ such that Article 66(d)(2), UCMJ, specifically invests the [CCAs] with authority to grant ‘appropriate relief’ for . . . excessive delay.” *Id.* at *13 n.39; *see* 10 U.S.C. § 866(d)(2) (prescribing that a “[CCA] may provide appropriate relief if the accused demonstrates . . . excessive delay in the processing of

the court-martial after the judgment was entered into the record”).

While an appellant has a *constitutional* right to speedy post-trial processing grounded in the Due Process Clause, *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006), this right is distinct from servicemembers’ *statutory* rights to speedy post-trial processing. 10 U.S.C. § 866(d)(2); *Tardif*, 57 M.J. at 225. Neither the plain text of 10 U.S.C. § 866(d)(2), nor the CAAF’s *Tardif* precedent, say that a due process violation is required to trigger relief under Article 66(d)(2). The Air Force Court’s decision contradicts both the text of the statute and precedent. This Court should grant review to fix this error or remand with instructions to the CAAF to do so.

B. Military courts generally agree that no due process violation is required, including other panels of the Air Force Court.

Not only does the Air Force Court’s decision¹ conflict with the plain text of the statute and the CAAF’s precedent, but it also conflicts with the decisions of other CCAs. *See, e.g., United States v. Abdullah*, 85 M.J 501, 2024 CCA LEXIS 479, at *9 n.5 (A. Ct. Crim. App. Nov. 5, 2024) (noting that Article 66(d)(2) did not alter a CCA’s authority to grant relief for non-constitutional post-trial delay); *United States v. Taylor*, Dkt. No. 1503, 2024 CCA LEXIS 477, at *4 (C.G. Ct. Crim. App. Nov. 4, 2024) (“Even in the absence of a due process violation, this Court may grant appropriate relief.”). Perhaps more concerning

¹ This is not the only case where the Air Force Court reasoned a due process violation was required for relief under Article 66(d)(2). *United States v. Sherman*, No. ACM 40486, 2025 CCA LEXIS 206, at *31 (A.F. Ct. Crim. App. May 12, 2025).

is that the rationale in this case also conflicts with other decisions from the Air Force Court. *See, e.g., United States v. Jenkins*, No. ACM S32765, 2025 CCA LEXIS 148, at *23 (A.F. Ct. Crim. App. Apr. 7, 2025) (“Recognizing our authority under Article 66(d)(2), UCMJ, we have also considered whether relief for excessive post-trial delay is appropriate *even* in the absence of a due process violation.” (emphasis added)).

The near unanimity with which military courts treat this issue shows the gravity of the Air Force Court’s error.

C. Post-trial delay errors are a systemic problem in the Air Force. Reversal of the Air Force Court’s opinion would impact a significant amount of cases.

The Air Force Court has previously found that post-trial errors are a “systemic problem indicating institutional neglect.” *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. June 7, 2024), *aff’d*, 85 M.J. 361 (C.A.A.F 2025). Over one and a half years, the Air Force Court remanded twenty cases for post-trial errors. *Id.* at *17-19. These errors often led to “unreasonable delays.” *Id.* at *19.

Because many cases in the Air Force are subject to “unreasonable” delays, a review and reversal of this case will ensure that myriad military appellants will have their statutory rights to speedy post-trial processing safeguarded.

CONCLUSION

The Air Force Court’s decision conflicts with the plain text of the statute, the CAAF’s binding precedent, the decisions of other military courts, and

the decisions of other panels of the Air Force Court. Despite this, the CAAF declined to review this case. This Court should grant review to either fix this error or remand to the CAAF to address the error.

Respectfully submitted,

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