STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
Chief of Staff

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Gregory M. Weber
Assistant Attorney General
webergm@doj.state.wi.us
608/266-3935
FAX 608/266-9594

May 30, 2017

Diane M. Fremgen, Clerk
Wisconsin Court of Appeals
110 East Main Street, Suite 215
Post Office Box 1688
Madison, Wisconsin 53701-1688

Re: *State of Wisconsin v. Jesse T. Riemer*
Case No. 2016AP398
District IV

Dear Ms. Fremgen:

Please accept this as the State of Wisconsin's response to defendant-appellant Jesse T. Riemer's supplemental filing of May 18, 2017.

Though counsel, Riemer has provided information pertaining to courts-martial proceedings conducted pursuant to the Uniform Code of Military Justice. The State responds in the following manner:

Point One: The military judge could not have relied on the evidence presented at the Article 32 hearing to support the sentence imposed. (Supp. at 2–3.) The State agrees with Riemer that the UCMJ—and, by extension, the Wisconsin Code of Military Justice—provide for liberal consideration of evidence properly before the military judge at sentencing. Nor does it appear that evidence presented at the Article 32 hearing is categorically excluded at sentencing in court-martial proceedings. Riemer's key contention is that, because the Government did not offer any portion of the Article 32 hearing transcript into evidence, the military judge could not consider it. (*Id.*) But if this Court elects to apply Wisconsin's standards of appellate review and controlling case law, (*see* State's Br. at 5–17), it can—and should—independently review the record in search of evidence to support the military judge's assessment of victim impact (*Id.* at 19–20).

Point Two: Military appellate courts limit review of the record to what was properly before the military judge at the court-martial. (Supp. at 3–4.) The State concurs with Riemer's assessment of the manner in which a military appellate court may review a record on appeal. He concludes that, were the Wisconsin Court of Appeals a military appellate court, it could not consider evidence generated at the Article 32 hearing in reviewing his sentence because it was not admitted at sentencing. (*Id.* at 4.) As stressed in the State's brief, this Court is not a military appellate court, and should not perform that function. State law plainly supports this Court's consideration of testimony taken at the Article 32 hearing.

Point Three: A plea of guilty does not result in a waiver of an accused's Article 66 right to a review of his sentence for sufficiency. (Supp. at 4–5.) The State concurs with Riemer's assessment as it pertains to appellate review of sentences in military appellate courts.

Point Four: Objections to the sentence were properly raised. (Supp. at 5.) The State concurs with Riemer's assessment as it pertains to appellate review of sentences in military appellate courts.

Sincerely,

Gregory M. Weber
Assistant Attorney General
Counsel for Plaintiff-Respondent

GMW:adl

cc: CPT Declan J. Binninger, JA
Counsel for Defendant-Appellant

CPT Craig Lambert
Court-Martial Officer