

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN
Appellate Military Judges**

**JOSHUA D. WILLIAMS
PERSONNELMAN SEAMAN APPRENTICE (E-2), U.S. NAVY**

v.

UNITED STATES OF AMERICA

**NMCCA 200301656
Review of Petition for Extraordinary Relief in the Nature of a
Writ of Error Coram Nobis**

Sentence Adjudged: 25 February 2003.

Military Judge: LtCol E.W. Loughran, USMC

Convening Authority: Commanding Officer, Personnel Support
Activity, Norfolk, VA.

Staff Judge Advocate's Recommendation: LT Aaron Rugh, JAGC,
USN.

For Petitioner: *Pro se.*

14 February 2012

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

The petitioner seeks extraordinary relief from this court in the form of a Writ of Error *Coram Nobis* under the All Writs Act, 28 U.S.C. § 1651(a). In his petition, he alleges that his guilty plea was the product of coercion from his trial defense counsel; that his defense counsel was ineffective, inexperienced, and had a conflict of interest in representing him; and that this court erred in its 25 May 2004 opinion that

found harmless the erroneous inclusion of two nonjudicial punishments in the staff judge advocate's recommendation. The petitioner seeks an order vacating his 2003 conviction.

Background

On 25 February 2003, a military judge, sitting as a special court-martial, convicted the petitioner, pursuant to his pleas, of a single specification of carnal knowledge, in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920. The petitioner was sentenced to confinement for a period of 11 months, forfeitures of \$750.00 pay per month for 11 months, reduction to the pay grade of E-1, and a bad-conduct discharge.¹ The convening authority approved the sentence as adjudged.²

On appeal, in a single assignment of error, the petitioner asserted a defect in the staff judge advocate's recommendation, because it contained inaccurate information concerning his nonjudicial punishment history. Having found no error materially prejudicial to the substantial rights of the petitioner, the findings and sentence were affirmed by this court on 25 May 2004. *United States v. Williams*, No. 200301656, unpublished op. (N.M.Ct.Crim.App. 25 May 2004) (per curiam).

Discussion

The All Writs Act authorizes this court to grant extraordinary relief in appropriate cases. An extraordinary writ is a drastic remedy that should only be used in extraordinary circumstances. *Aviz v. Carver*, 36 M.J. 1026, 1028 (N.M.C.M.R. 1993). The petitioner has the burden to show a clear and indisputable right to the extraordinary relief requested. *Denedo v United States*, 66 M.J. 114, 126 (2008) (citing *Cheney v. United States Dist. Court*, 542 U.S. 367, 381 (2004)), *aff'd*, *United States v. Denedo*, 556 U.S. 904 (2009). However, before the court may address the merits of a *coram nobis* petition, the petitioner must meet six threshold requirements and show:

¹ We note the military judge did not say "pay" when announcing forfeitures, but since this was a special court-martial, only pay could be forfeited, vice pay and allowances.

² The petitioner and the convening authority entered into a pretrial agreement wherein the petitioner agreed to plead guilty at a special court-martial, vice a general court-martial. Appellate Exhibits I and II; Record at 67. Such pretrial advocacy, drastically reducing the petitioner's punitive exposure, serves to further dilute his assertions regarding the effectiveness of his counsel.

(1) the alleged error is of the most fundamental character; (2) no remedy other than *coram nobis* is available to rectify the consequences of the error; (3) valid reasons exist for not seeking relief earlier; (4) the new information presented in the petition could not have been discovered through the exercise of reasonable diligence prior to the original judgment; (5) the writ does not seek to reevaluate previously considered evidence or legal issues; and, (6) the sentence has been served, but the consequences of the erroneous conviction persist.

Denedo, 66 M.J. at 126.

The petitioner has failed to demonstrate valid reasons for not seeking relief earlier. He claims that he has suffered an extended period of homelessness because of Hurricane Katrina, and was prevented from filing his petition. Hurricane Katrina struck the United States on 28 August 2005. NOAA.gov, <http://www.katrina.noaa.gov/> (last visited 1 Feb 2012). The petitioner's appeal was completed on 25 May 2004, over a year before Hurricane Katrina struck land. The petitioner submitted a single assignment of error during his appeal, and fails to demonstrate why the new matters he now raises were not raised at that time.

The petitioner has failed to demonstrate the threshold criteria for consideration of the merits of the petition. Furthermore, even if the petitioner was able to meet the *coram nobis* threshold requirements, he would not be entitled to relief. In reviewing the documents submitted by the petitioner, which includes the record of trial and related appellant documents, we note the petitioner pleaded guilty to engaging in sexual intercourse with MJ, a 13-year-old dependent child of another service member. The petitioner's guilty plea was supported by a stipulation of fact, wherein the petitioner admitted to engaging in the aforementioned misconduct, and his 14 August 2002 statement to the Naval Criminal Investigative Service (NCIS), wherein he confessed to engaging in sexual intercourse with MJ. Both the stipulation of fact and the statement to NCIS state that the petitioner learned of MJ's true age from her mother two days prior to having sexual intercourse with her. Accordingly, the military judge accepted the petitioner's pleas and found him guilty of the offense.

Although the petitioner now claims his defense counsel coerced him into pleading guilty, was ineffective,

inexperienced, and suffered a conflict of interest in representing him, the documents submitted to this court betray an opposing reality. In fact, in the pretrial agreement, the petitioner expresses his satisfaction with his defense counsel and states that he was not coerced into pleading guilty. Appellate Exhibit I at 2. Further, upon inquiry from the military judge, the petitioner stated he had not been forced or threatened into entering into a pretrial agreement, had not been forced or threatened to plead guilty, was pleading guilty voluntarily, wished to plead guilty, and was satisfied that his counsels' advice was in his best interest. Record at 12, 39.

After carefully considering the petition, the accompanying documents, and this court's prior decision, we conclude that the petitioner has failed to demonstrate that an extraordinary writ is appropriate. We, therefore, deny his petition.

For the Court

R.H. TROIDL
Clerk of Court