

Tuesday, 25 January 2011

1200 at the Jacob Burns Moot Courtroom - George Washington University Law School

United States v. Pineda

A panel of members with enlisted representation sitting as a general court-martial convicted the appellant, contrary to his pleas, of aggravated sexual assault by engaging in a sexual act with a person who was substantially incapacitated, in violation of Article 120, UCMJ, 10 U.S.C. § 920. The members sentenced the appellant to three months confinement and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged and, except for the punitive discharge, ordered the sentence executed. The issue to be argued before the Court is:

I. ARTICLE 73 OF THE UCMJ ALLOWS AN APPELLANT TO PETITION FOR A NEW TRIAL UPON DISCOVERY OF NEW EXCULPATORY EVIDENCE OR UPON EVIDENCE OF FRAUD COMMITTED UPON THE COURT. AFTER THE APPELLANT'S CONVICTION, SN K.A., A KEY GOVERNMENT WITNESS, DISCLOSED NEW EXCULPATORY INFORMATION TO NCIS AND ADMITTED TO MAKING SEVERAL FALSE STATEMENTS TO THE COURT. SN K.A. IS NOW DECEASED. SHOULD THE APPELLANT BE GRANTED A NEW TRIAL BASED ON THE POST-TRIAL STATEMENTS OF SN K.A.?