Monday, 8 August 2011

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Wuterich v. United States

The underlying facts of the Petitioner's court-martial arise out of events that occurred while the Petitioner was on a combat patrol in Haditha, Iraq in November 2005. The Government referred charges against the Petitioner to a general courtmartial in December 2007, alleging dereliction of duty, voluntary manslaughter, aggravated assault, reckless endangerment, and obstruction of justice in violation of Articles 92, 119, 128, and 134 of the Uniform Code of Military Justice (UCMJ).

The Petitioner was initially represented at the trial level by Lieutenant Colonel (LtCol) Colby Vokey, USMC (Ret.). LtCol Vokey retired from active duty in November 2008 yet still made several appearances as counsel for the Petitioner until September 2010 when the attorney-client relationship ended due to a conflict of interest on LtCol Vokey's part.

The Petitioner filed a writ petition with this Court in October 2010, seeking a stay so that he could file an extraordinary writ to protect his attorney-client relationship with LtCol Vokey.
This Court denied the petition. The Petitioner then filed a petition for a writ of mandamus with this Court, seeking a declaration that his attorney-client relationship with LtCol Vokey was improperly severed. This Court denied that petition as well without prejudice to raise the matter during the ordinary course of appellate review. The Petitioner then sought relief from the Court of Appeals for the Armed Forces (CAAF). The CAAF vacated this Court's decision and remanded the case to this Court to determine whether the Military Judge abused his discretion in finding good cause to sever the attorney-client relationship between the Petitioner and LtCol Vokey. On remand, this Court found that the Military Judge did not abuse his discretion by granting Mr. Vokey's request to withdraw for a conflict of interest. The Petitioner once again petitioned the CAAF, which denied the Petitioner's writ appeal claiming that it raised new issues on appeal not presented to the trial judge.
The Petitioner then petitioned the trial court to abate the courtmartialproceedings until LtCol Vokey is restored as the Petitioner's detailed defense counsel. The Military Judge denied the Petitioner's motion.

The matter is currently before the Court on a Petition for Extraordinary Relief in the Nature of a Writ of Mandamus. The

Petitioner is seeking a writ of mandamus to secure his right to continued representation by LtCol Vokey. He has petitioned this Court to abate his court-martial proceedings until the United States restores his attorney-client relationship with LtCol Vokey.

The issues to be argued before the Court are the following:

I. WHETHER THE PETITIONER MEETS THE THRESHOLD REQUIREMENTS FOR MANDAMUS RELIEF BASED UPON HIS CLAIM THAT LTCOL VOKEY, HIS FORMER DETAILED DEFENSE COUNSEL AND CIVILIAN DEFENSE COUNSEL, SHOULD BE RESTORED TO HIS DEFENSE TEAM BEFORE PETITIONER'S COURT-MARTIAL PROCEEDS.

II. WHETHER LTCOL VOKEY VOLUNTARILY TERMINATED HIS REPRESENTATION OF THE PETITIONER WHEN HE ALERTED THE TRIAL JUDGE TO A CONFLICT OF INTEREST AND MOVED TO WITHDRAW HIMSELF AS CIVILIAN DEFENSE COUNSEL IN SEPTEMBER 2010.

III. IF LTCOL VOKEY VOLUNTARILY RETIRED FROM ACTIVE DUTY AND THEN ASSUMED THE MANTLE OF CIVILIAN DEFENSE COUNSEL IN REPRESENTING THE PETITIONER IS RESTORATION TO ACTIVE DUTY A VIABLE OPTION FOR REMEDY