

Monday, 22 August 2011

1300

United States v. Parker

In July 1993, the appellant was convicted by a general courtmartial of two specifications of conspiracy, two specifications of violating an order, two specifications of murder, one specification of robbery, and two specifications of kidnapping in violation of Articles 81, 92, 118, 122, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 892, 918, 922, and 934. The appellant was sentenced to death, forfeiture of all pay and allowances, and reduction to pay grade E-1. The convening authority approved the findings and sentence as adjudged. In February 2007, this Court issued an opinion determining that the penalty of death was still available in the appellant's case.

In June 2007, this Court returned the record of trial in this capital case to the Judge Advocate General for return to an appropriate convening authority for the purpose of conducting a mental health examination and a hearing in accordance with *United States v. Dubay*, on the issue of mental retardation.

In August 2010, this Court returned the record of *DuBay* hearing in this case to the Judge Advocate General for remand to an appropriate convening authority to order a new *DuBay* hearing for the limited purpose of establishing the nature and extent of the personal contact between the military judge and the Government expert in this case.

In September 2010, the Government filed a joint Motion for En Banc Reconsideration and Motion to Stay, which this Court denied.

In October 2010, the Court of Appeals for the Armed Forces (CAAF) granted a Motion filed by the Government requesting a stay of this Court's orders of August and September 2010. In November 2010, the CAAF denied the Government's Petition for a Writ of Mandamus and lifted the previously imposed stay. In November 2010, this Court returned the record of trial to the Judge Advocate General for remand to an appropriate convening authority for proceedings consistent with this court's original August 2010 order. The Court ordered that the record of hearing, to include the *DuBay* judge's findings of fact and conclusions of law, be delivered to the Court on or before 20 January 2011.

In January 2011 the Government filed a motion for an enlargement of the 20 January 2011 due date imposed by this Court. This Court denied the Government's motion. The complete record with findings and transcripts from all subsequent *DuBay* hearings was received by this Court in March 2011. The appellant now comes before this Court in the normal course of Art. 66 review.

The issue to be argued before the Court is as follows:

I. WHETHER THIS COURT SHOULD GRANT THE APPELLANT'S FOURTH MOTION FOR ENLARGMENT OF TIME (NON-CONSENT) BEYOND 22 AUGUST 2011.