

Thursday, 2 September 2010

United States v. Vasquez

A panel of members with enlisted representation sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of attempted possession of Oxycotin, a Schedule I controlled substance, with the intent to distribute, in violation of Article 80, UCMJ, 10 U.S.C. § 880. The Members sentenced the appellant to three years confinement, reduction to pay grade E-1, forfeiture of all pay and allowances, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged and, except for the punitive discharge, ordered the sentence executed. The issues to be argued before the Court are:

I. APPELLANT'S CONVICTION IS FACTUALLY AND LEGALLY INSUFFICIENT BECAUSE THE GOVERNMENT DID NOT INTRODUCE SUFFICIENT EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT WAS NOT ENTRAPPED INTO THE OFFENSE OF ATTEMPTED POSSESSION WITH THE INTENT TO DISTRIBUTE.

II. THE MILITARY JUDGE ERRED BY DENYING APPELLANT'S MOTION TO DISMISS FOR A VIOLATION OF ARTICLE 10, UCMJ.

III. APPELLANT'S SENTENCE IS INAPPROPRIATELY SEVERE BECAUSE GOVERNMENT CONDUCT ENTICED APPELLANT INTO COMMITTING AN OFFENSE QUALITATIVELY MORE SEVERE THAN HE ORIGINALLY INTENDED. IN ADDITION, HE HAS NOW BEEN SENTENCED BY TWO SOVEREIGNS FOR THE SAME CRIME.