

Tuesday, 18 October 2011

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United States v. Hackler

This case is being considered in the wake of the opinion of the Court of Appeals for the Armed Forces in *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011).

The issue to be argued before the Court, sitting *en banc*, is the following:

WHETHER A BREAKING RESTRICTION SPECIFICATION, UNDER ARTICLE 134, CLAUSE 1 OR 2, THAT FAILS TO EXPRESSLY ALLEGE EITHER POTENTIAL TERMINAL ELEMENT STATES AN OFFENSE UNDER THE SUPREME COURT'S HOLDINGS IN *UNITED STATES v. RESENDIZ-PONCE* AND *RUSSELL*

v. UNITED STATES, AND THE COURT OF APPEALS FOR THE ARMED FORCES' OPINION IN *UNITED STATES v. FOSLER*, 70 M.J. 225 (C.A.A.F. 2011), IN THIS CASE, WHERE THE APPELLANT PLED GUILTY, ENTERED INTO A PRETRIAL AGREEMENT WITH THE CONVENING AUTHORITY, WAS PROPERLY INFORMED OF THE ELEMENTS OF THE OFFENSE -- INCLUDING THE TEMINAL ELEMENTS-- BY THE MILITARY JUDGE, DID NOT OBJECT AT TRIAL TO THE SPECIFICATION AS DRAFTED, AND ADMITTED TO ALL OF THE ELEMENTS OF THE OFFENSE DURING THE PROVIDENCE INQUIRY? *Cf. United States v. Harvey*, 484 F.3d 453 (7th Cir. 2007); *United States v. Cox*, 536 F.3d 723 (8th Cir. 2008); *United States v. Awad*, 551 F.3d 930 (9th Cir. 2009).