

Tuesday, 28 November 2017 (1000)
The United States Navy-Marine Corps Court of Criminal Appeals Courtroom
1254 Charles Morris Street SE, Bldg 58, Suite 320
Washington Navy Yard, DC 20374

United States v. Christopher, NMCCA No. 201600249

Before the Court (*En banc*): Chief Judge Glaser-Allen
Senior Judge Marks
Judge Jones
Judge Sayegh
Judge Woodard

For Appellant: LT Jacob Meusch, JAGC, USN

For Appellee: LT Megan Marinos, JAGC, USN

A panel of officer and enlisted members sitting as a general court-martial convicted the appellant, contrary to his pleas, of three specifications of assault consummated by a battery upon a child in violation of Article 128, UCMJ, and one specification of indecent acts with a child in violation of Article 134, UCMJ. Members acquitted him of four specifications of assault consummated by a battery upon a child, and one specification of indecent acts with a child. The court-martial sentenced appellant to total forfeiture of all pay and allowances, six years confinement, and reduction to paygrade E-1.

In a post-trial 39(a) session, the MJ found the statute of limitations barred prosecution of two specifications of Charge I. The MJ dismissed those specifications and declared a mistrial as to sentencing. At resentencing, a new panel of officers and enlisted members sentenced the appellant to two years confinement, reduction to paygrade E-1, and awarded a dishonorable discharge.

The Convening Authority approved the sentence adjudged at the resentencing, except for the dishonorable discharge, and ordered the confinement and reduction to be executed.

The issues to be argued before the Court are as follows:

- I. COURT-MARTIAL JURISDICTION REQUIRES THAT CHARGES BE REFERRED BY A “COMPETENT AUTHORITY.” DID THE COURT-MARTIAL LACK IN-PERSONAM JURISDICTION OVER THE APPELLANT WHERE HE WAS A VALIDLY RETIRED SERVICEMEMBER AT THE TIME OF PREFERRAL, HIS RETIREMENT WAS NEVER CANCELED BY SECNAV, THE CASE WAS REFERRED BY A SUBORDINATE COMMANDER, AND R.C.M. 601(b)(3) REQUIRES REFERRAL FOR RETIREES TO BE COMPLETED BY SECNAV, THE “COMPETENT AUTHORITY,” AS A PREREQUISITE TO JURISDICTION?**

- III. BEFORE ACCEPTING CTT1 CHRISTOPHER’S GUILTY PLEA, THE MILITARY JUDGE HAD A DUTY TO ADVISE HIM OF HIS RIGHT TO ASSERT THE PROTECTION OF THE STATUTE OF LIMITATIONS. IN FAILING TO DO SO, DID THE MILITARY JUDGE ABUSE HER DISCRETION?**

**VII. *UNITED STATES V. WALTERS*, 58 M.J. 391 (C.A.A.F. 2003),
REQUIRES THAT THE MILITARY JUDGE CLARIFY
AMBIGUOUS FINDINGS BY THE MEMBERS ON A
CONVICTION IN ORDER FOR A FACTUAL SUFFICIENCY
REVIEW TO BE COMPLETED. MUST THE APPELLANT'S
CONVICTION UNDER ARTICLE 134 BE OVERTURNED
WHERE THE MEMBERS WERE NOT GIVEN INSTRUCTIONS
TO MAKE A SPECIFIC FINDING AS TO THE DATE OF THE
OFFENSE, AND WHERE THE EVIDENCE PRESENTED
SHOWED THE OFFENSE COULD HAVE OCCURRED
OUTSIDE THE STATUTE OF LIMITATIONS?**