

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.**

BEFORE

C.A. PRICE

M.J. SUSZAN

R.C. HARRIS

**William C. BRAGG
Staff Sergeant (E-6), U.S Marine Corps**

Petitioner

v.

UNITED STATES

Respondent

NMCCA 200400096

Decided 5 April 2004

LT COLIN A.KISOR, JAGC, USNR, Appellate Defense Counsel
LCDR R.C. KLANT, JAGC, USN, Detailed Defense Counsel
LT FRANK L. GATTO, JAGC, USNR, Appellate Government Counsel

Decision on Petition for Extraordinary Relief in the Nature of a
Writ of Prohibition.

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PRICE, Senior Judge:

On 21 January 2004, the petitioner filed a petition for extraordinary relief in the nature of a writ of prohibition. The petitioner asserts that the military judge erred in ruling on a defense motion to suppress statements made by the petitioner to a polygraph examiner retained by the trial defense counsel. As requested relief, the petitioner would have us issue a writ ordering the respondent to refrain from (1) introducing into evidence the examiner's report, (2) issuing a subpoena against the examiner, and (3) calling the examiner as a Government witness.

On 28 January 2004, we issued an order requiring the Respondent to show cause why the petition should not be granted. On 6 February 2004, pursuant to the petitioner's motion, we stayed proceedings in the court-martial at the trial level and ordered production of a verbatim transcript of any relevant proceedings. On 27 February 2004, the respondent produced the authenticated transcript. On 4 March 2004, the Respondent filed a brief in response to our show cause order. We subsequently granted two enlargements of time to allow the petitioner time to file a reply to the respondent's brief. The petitioner failed to file a reply within the allotted time.

The issuance of a writ is a "drastic remedy that should be used only in truly extraordinary situations." *Aviz v. Carver*, 36 M.J. 1026, 1028 (N.M.C.M.R. 1993). The petitioner bears the heavy burden to show "that he is clearly and indisputably entitled to the relief as a matter of right." *Ross v. United States*, 43 M.J. 770, 771 (N.M.Ct.Crim.App. 1995).

We read the military judge's ruling on the motion as precluding the respondent from offering the specific results of the polygraph examination, the opinion of the examiner regarding the petitioner's deception or lack of deception, and the fact that the petitioner took the polygraph examination. We understand that the military judge also ruled that statements made before, during, and after the examination by the petitioner to the examiner were admissible. See MIL. R. EVID. 707, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.)

Having completed our review of the transcript and all pleadings, we conclude that the petitioner has failed to establish his right to the requested extraordinary relief. Accordingly, the petition is denied, without prejudice to the petitioner's right to raise these issues in the normal course of appellate review. The stay of proceedings is vacated.

Judge SUSZAN and Judge HARRIS concur.

For the Court

R.H. TROIDL
Clerk of Court