

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
E.E. GEISER, R.G. KELLY, L.T. BOOKER
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CHRISTOPHER M. JOHNSON
CAPTAIN (O-3), U.S. MARINE CORPS**

**NMCCA 200800020
GENERAL COURT-MARTIAL**

Sentence Adjudged: 14 September 2007.
Military Judge: Col Steven Day, USMC.
Convening Authority: Commander, Marine Corps Base,
Quantico, VA.
Staff Judge Advocate's Recommendation: LtCol J.G. Baker,
USMC.
For Appellant: LT Brian Korn, JAGC, USN.
For Appellee: Maj James Weirick, USMC.

21 October 2008

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

GEISER, Senior Judge:

A military judge sitting as a general court-martial convicted the appellant, consistent with his pleas, of making a false official statement, two specifications of larceny, and two specifications of wrongful appropriation in violation of Articles 107 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 921. The convening authority (CA) approved the adjudged sentence of confinement for 18 months, total forfeiture of pay and allowances, and a dismissal.

The appellant, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), raises thirteen assignments of error.¹ We have considered the record of trial, the appellant's brief, declarations by the appellant and his wife, and the Government's response. We find that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. See Arts. 59(a) and 66(c), UCMJ.

Unlawful Command Influence (UCI)

We review allegations of unlawful command influence *de novo*. *United States v. Villareal*, 52 M.J. 27, 30 (C.A.A.F. 1999). The appellant has the initial burden of raising the issue on appeal by showing (1) facts which, if true, constitute unlawful command influence; (2) that the proceedings were unfair; and (3) that unlawful command influence was the cause of the unfairness. *United States v. Stombaugh*, 40 M.J. 208, 213-14 (C.M.A. 1994). In *United States v. Reynolds*, 40 M.J. 198, 202 (C.M.A. 1994), the court defined what it means, in an appellate context, to "show" that the proceedings were unfair because of UCI. Prejudice is not presumed until the defense produces evidence of proximate causation between the acts constituting UCI and the outcome of the court-martial. *Reynolds*, 40 M.J. at 201-02. The appellant in the instant case has failed to meet this burden.

The appellant's wife submitted an affidavit in support of this assignment of error.² At the relevant time, the appellant's wife worked for the Marine Corps Marathon (MCM) in a public relations capacity. She asserts in her declaration that the CA in the appellant's case was her ultimate reporting senior and was responsible for approving her "pay raises and promotional opportunities." Elizabeth Johnson's Declaration of 9 Jun 2008 at 1. She further asserts that her boss, Mr. Nealis, informed her that the CA had contacted him on three occasions and that during

¹ I - Unlawful command influence (UCI); II - ineffective assistance of counsel (IAC)(failure to raise UCI); III - IAC (failure to request relief for illegal pretrial punishment); IV - IAC (failure to raise speedy trial motion); V - sentence severity; VI - 8th Amendment violation (loss of retirement constitutes an excessive fine); VII - 13th Amendment violation (placing the appellant into an appellate leave status constituted slavery or involuntary servitude); VIII - CA did not approve the dismissal in this case; IX - military judge abused his discretion by failing to inquire if the appellant suffered any Article 13 violations); X - military judge abused his discretion by using leading questions during the providence inquiry; XI - improvident plea (providence inquiry failed to establish that the appellant knew who owned the jet skis at the time he took them and later when he sold them); XII - Government violated Art. 32, UCMJ, by coercing the appellant into waiving his Art. 32, UCMJ, hearing by threatening not to enter into the pretrial agreement unless he did so; XIII - 4th Amendment violation (Government investigators failed to utilize processes in the Financial Privacy Act in order to obtain the appellant's financial records).

² Elizabeth Johnson's Declaration of 9 Jun 2008.

these contacts, the CA "expressed displeasure with her husband's case." *Id.* The affidavit provided no elaboration on the focus of the CA's alleged displeasure. Further, according to the declarant, Mr. Nealis unprofessionally related the CA's views of the case to other members of the MCM staff. *Id.* The declarant interpreted the CA's communications as an attempt to leave her "professionally and personally embarrass[ed]" and left her in fear for [her] job security." *Id.* She communicated the incidents to the appellant.

The appellant submitted his own affidavit in support of this assignment of error.³ The appellant states that he informed his civilian attorney, Mr. Neal Puckett, that the CA had exercised UCI when "on numerous occasions he attempted to influence my decisions by placing pressure on my wife." Appellant's Declaration of 10 Jun 2008 at 4. Specifically, the appellant asserts that he told his lawyer that the CA had "let my wife know in no uncertain terms that he was calling the shots and that he was responsible for approving any pay raises or bonuses that she might receive." *Id.*

He reiterates that the CA contacted "my wife's direct supervisor" to "inform him of his displeasure concerning my case." *Id.* Again, there is no indication of when the CA communicated his displeasure or what, specifically, he was displeased with. The appellant's declaration further states that his wife was worried that "if I did not agree to the [pretrial] agreement she might lose her job...." *Id.*

The appellant asserts that he raised this issue among others to Mr. Puckett on several occasions and that the attorney steadfastly refused to raise the issue at trial. The appellant states that while Mr. Puckett agreed the circumstances gave the appearance of impropriety, he would not raise the issue on the appellant's behalf. Finally, the appellant asserts that he was waiting at trial for the judge to ask him whether he had suffered any pretrial punishment but that the judge never asked that question.

Taking the two declarations at face value, we find that the appellant's post-trial claim is inadequate on its face. Further, we find that the record before us refutes the facts and inferences alleged in the appellant's assignment of error. *United States v. Ginn*, 47 M.J. 236 (C.A.A.F. 1997). With regard to adequacy, neither of the declarations submitted by the appellant reflects when the three alleged communications took place. Further, neither articulates any specific threats communicated by the CA to Mr. Nealis or that the CA was even aware that Mr. Nealis was passing the CA's statements to the appellant's wife. All the appellant factually asserts is that the CA was generically displeased about the appellant's case.

³ Appellant's Declaration of 10 Jun 2008.

Without context, the CA's generalized statements of displeasure are at best ambiguous. That the appellant's wife inferred that the CA's intent was to put pressure on the appellant through her to take the pretrial agreement is but pure speculation. We further note that the pretrial agreement was signed on 21 May 2007, but the appellant didn't initially raise this issue to Mr. Puckett until 2 July 2007. Appellant's Declaration at 4. Neither the appellant's nor his wife's affidavit states whether this contact occurred before or after the PTA was concluded.

Even assuming, *arguendo*, that the declarations submitted by the appellant were sufficiently detailed to raise a facial claim of UCI, the record clearly refutes the facts and inferences asserted. First, the pretrial agreement of 21 May 2007 states in pertinent part that the appellant is "entering into this agreement freely and voluntarily" and that "nobody has made any attempt to force or coerce me into making this agreement or into pleading guilty." Pretrial Agreement of 21 May 2007 at 1. Further, when questioned by the military judge regarding his pleas and his agreement with the CA, the appellant stated repeatedly on the record that he was freely and voluntarily electing trial by judge alone, that he believed his attorney's advice was in his best interest, that he was pleading guilty voluntarily, and that no one had attempted to coerce him into pleading guilty. Record at 15, 18, 22, 24, 53, 56, 59.

With respect to the declaration authored by the appellant's wife, we note that she testified under oath during the pre-sentencing portion of the trial. During her testimony she described her public relations duties at the MCM in very positive terms. She was, as she described it, the "public face" of the marathon and she described her duties, in part, as having to babysit the race director, Mr. Nealis, during interviews with the media. *Id.* at 101. Nowhere in her testimony does she indicate any sense of threat or tension within the office or with Mr. Nealis personally, nor does the testimony appear to be influenced by any alleged threat to her employment.

We hold that the appellant has failed to meet his burden of production. The declarations submitted by the appellant primarily state conclusions regarding the CA's motivations without a supporting factual basis. This assignment of error is without merit.

The appellant's remaining twelve assignments of error are also without merit. We specifically find that the appellant's civilian defense counsel's performance did not fall below an "objective standard of reasonableness." *United States v. Edmond*, 63 M.J. 343, 345 (C.A.A.F. 2006)(citing *Strickland v. Washington*, 466 U.S. 668 (1984)). We further find that the appellant's sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005); *United*

States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

Conclusion

The findings and the approved sentence are affirmed.

Judge KELLY and Judge BOOKER concur.

For the Court

R.H. TROIDL
Clerk of Court